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In The

Supreme Court of the United States

HARLEY D. ZEPHIER, SR., ET AL.,

Petitioners,

v.

UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Federal Circuit Court of Appeals erred in failing to recognize the existence of a trust corpus in property and beneficiary rights for and on behalf of the lineal descendants of the Loyal Mdewakantons, from the March 3, 1863 Act and that the existing trust corpus was intended to be implemented and enhanced by the subsequent legislation found in the Appropriations Acts of 1888, 1889, 1890 and 1980.

2. Whether the Federal Circuit Court of Appeals erred in not applying the doctrine of judicial estoppel as set forth in *New Hampshire v. Maine*, 532 U.S. 742 (2001) and thus allowed the United States to argue the existence of a trust and obtain a favorable result in the Eighth Circuit, *Cermak v. United States*, 478 F.3d 953 (8th Cir. 2007) and to argue the lack of a trust and obtain a favorable result in the Federal Circuit, *Wolfchild v. United States*, 559 F.3d 1228 (Fed. Cir. 2009), thereby creating a split in the Circuits.

LIST OF PARTIES

The List of Parties is set out in a separate letter to the Court.

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OPINION BELOW

The three judge panel of the United States Court of Appeals for the Federal Circuit issued its Opinion and Order dated March 10, 2009, reversing the United States Court of Federal Claims decisions that a trust existed in the 1886 lands of the Loyal Mdewakanton Dakota Sioux in Minnesota, by virtue of Appropriations Acts in 1888, 1889 and 1890, and also reversed on the Court of Federal Claims Court's finding that the 1980 Act did not terminate the trust as it pertained to the Loyal Mdewakantons.

STATEMENT OF JURISDICTION

The three judges of the United States Court of Appeals for the Federal Circuit in *Wolfchild, et al. v. United States* reversed the trust rulings of the federal court of claims in its Opinion and Order dated March 10, 2009. The Petitioners filed for rehearing and reconsideration en banc, which was denied by the full panel of the United States Court of Appeals for the Federal Circuit on June 11, 2009. The United States Supreme Court has jurisdiction of this case pursuant to 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

Act of 1889, 25 Stat.980, 992-93 in pertinent part reads:

> For the support of the full-blood Indians in Minnesota heretofore belonging to the

Mdewakanton band Sioux Indians, who have resided in said State since the twentieth day of May eighteen hundred and eighty-six, or who were then engaged in removing to said State, and have since resided therein, and have severed their tribal relations, twelve thousand dollars, to be expended by the Secretary of the Interior as follows: Ten thousand dollars in the purchase, as in his judgment he may think best, of such lands, agricultural implements, seeds, cattle, horses, food, or clothing as may be deemed best in the case of each of these Indians or family thereof; one thousand dollars or so much thereof as may be necessary, to defray the expenses of expending the money in this paragraph appropriated; and one thousand dollars for the completion and furnishing of the schoolhouse for said Indians authorized by [the 1888 Act]: Provided, that if the amount in this paragraph appropriated ... shall not be expended within the fiscal year for which either sum was appropriated, neither shall be covered into the Treasury, but shall, notwithstanding, be used and expended for the purposes for which the same amount was appropriated and for the benefit of the above-named Indians: And provided also, That the Secretary of the Interior may appoint a suitable person to make the above-mentioned expenditure under his direction; and all of said money which is to be expended for lands, cattle, horses, implements, seeds, food, or clothing shall be so expended that each of the Indians

> in this paragraph mentioned shall received [sic], as nearly as practicable, an equal amount in value of this appropriation and that made by said act of June twenty-ninth, eighteen hundred and eighty-eight: And provided further, That as far as a practicable lands for said Indians shall be purchased in such locality as each Indian desires, and none of said Indians shall be required to remove from where he now resides and to any locality against his will.

Act of February 16, 1863, 12 Stat.654, Section One reads in pertinent part: abrogated and annulled all treaties, between said Indians and the United States, declared all lands and rights of occupancy with the State of Minnesota and all annuities and claims heretofore accorded to said Indians or any of them, to be forfeited to the United States.

Act of March 3, 1863, 12 Stat.654. Section Nine reads in pertinent part:

> this statute authorized the Secretary of the Interior [t]o set apart of the public lands, not otherwise appropriated, eighty acres in severalty to each individual of the beforenamed bands who exerted himself in rescuing whites from the late massacre [by] said Indians. The land so set apart ... shall be an inheritance to said Indians and their heirs forever.

25 U.S.C. §462 reads in pertinent part: ... [t]he existing periods of trust placed upon any Indian lands

and any restriction on alienation thereof are extended and continued until otherwise directed by Congress.

I. STATEMENT OF THE CASE

This is not a case merely about money. This is an important case about recognizing and correcting history concerning a group of honorable people, who have left human legacies of accomplishment, descendancy, heirship, pain, suffering, personal tragedy, loss, near genocide, and hope, for the future. The three judge panel of the United States Court of Appeals for the Federal Circuit, in reversing the Federal Court of Claim's decision recognizing an existing and continuing trust corpus for the lineal descendants of the Loyal Mdewakanton from 1863 through the 1980 Act, if allowed to stand, creates a gross and unjust inequity affecting thousands of justly deserving Native American people. The lineal descendants petition to have this Court correct the obvious conflict within the Federal Circuit Court of Appeals itself and with the Eighth Circuit Court of Appeals decision on the same issue, caused by this Federal Circuit decision. These Petitioners join arguments put forth in the other Petitioners' petition for certiorari.

II. STATEMENT OF FACTS

Thousands of years had passed while the Native peoples of North America lived upon their valued aboriginal homes. The aboriginal inhabitants of the continent viewed possession of material things as shared and communal. The spiritual and ecological

environment allowed for the existence of man, plant and beast, in a balanced ecosystem functioning consistent with the beliefs gained through the guidance of the Great Spirit.

A. HISTORICAL BACKGROUND

Petitioners claim to be lineal decedents of individual Loyal Mdewakantons referenced in the March 3, 1863 Act and the Appropriations Acts of 1888, 1889 and 1890.

Many Petitioners are lineal descendants of the Chiefs Wabasha, Little Crow and Red Wing; Chiefs of the Mdewakanton Dakota Sioux who exercised governance over the Mdewakanton peoples. Individual potentate rights existed as to the Chiefs' heirs and lineal descendants including individual rights, remedies and property interests as set forth in the Sioux treaties from 1825 through 1868. Many of the Plaintiffs are lineal descendants of original Mdewakanton Dakota Sioux listed on the Henton List (commonly known as the "1886 Census" of the Mdewakanton Sioux living in Minnesota since May 20th, 1886), and of the Loyal Mdewakantons (Loyals) derived from various other agency and governmental lists and resources such as the Sioux Scouts and Soldiers list of 1891 (Elrod List), the Renville Rangers, the Brown Scouts lists, the 1899 McLaughlin census, the Santee Sioux census of 1917, the Congressional Globe list of 1863-65, and the Loyal Mdewakanton lineal descendants who do not otherwise appear on any given

census or list, who also would qualify as Loyal Mdewakantons. APP8-20,31-43,58-67,95-96.

B. HISTORY AND THE TREATIES

The significance of the treaties between the Mdewakanton Sioux and the United States, France, Spain and Britain cannot be understated. The Louisiana Purchase in 1803, was an agreement between the French government and the new United States government transferring the right to lands beyond Ohio and Missouri. Predating the Louisiana Purchase, and the Northwest Ordinance of July 13, 1787, it was France through its representatives, that negotiated sovereign to sovereign agreements with the various bands of the Sioux, including the Mdewakanton Sioux, which were based upon recognition of sovereign and *individual* rights of use, enjoyment, occupation and peace, with the Sioux, by and through their headmen and Chiefs, for the benefit of the "bands" as well as the individual members. When a "sovereign" makes *treaties* with another sovereign, such as the French with the Sioux, United States law recognizes that no treaty can be abandoned or abrogated without an express intent to abrogate. A sovereign to sovereign treaty cannot be abrogated by implication, nor by solely executive order or executive act. *United States v. Dion*, 476 U.S. 734, 740 (1986). The same holds true for statutes. The genesis of federal Indian law only started with the onset of legal cases after 1790, in cases such as *Worcester v. Georgia*, 31 U.S. 515 (1832). *See Cohen's*

Handbook of Federal Indian Law, 2005 Ed., Ch.2, Sec. B.4, p. 60-72.

The Louisiana Purchase, however, never included the sovereign interests of the Sioux, nor the Mdewakanton Sioux. *Treaty Between the United States of America and the French Republic, April 30, 1803 in Treaties and Other International Acts of the United States of America*, v.2 (Hunter Miller ed.) (1931). The Louisiana Purchase, which allegedly formed the basis of the sovereign to sovereign relationship between the United States and the Sioux and its people, was not negotiated or agreed upon by any of the Sioux bands, tribes or individual chiefs. Article III recognizes:

> that "the inhabitants of the [Louisiana Territory] ceded territory shall be incorporated in the Union of the United States admitted as soon as possible according to the principles of the Federal Constitution to the enjoyment of all these rights, advantages and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of liberty, property and the Religion which they profess."

Id.

Further, Article VI of the Treaty stated that "The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians until by mutual consent of the United States and the said tribes or

nations other suitable articles shall have been agreed upon." *Id.*

The Mdewakanton's aboriginal lands existed in the Minnesota and Dakota Territories. Only through the treaties of 1825, 1831, 1837, 1851, 1858 and 1868, have the United States and its agents dealt with the Mdewakatons and its individual Dakota Indians.

C. THE MINNESOTA SIOUX BEFORE AUGUST 1862

Before the formation of the United States, the Mdewakanton Dakota Sioux began seeing foreign visitors in their lands in Iowa, Wisconsin, Michigan and Minnesota. The territory of Minnesota prior to the 1851 Treaty of Traverse des Sioux, included only original counties called Wabashaw, Dahkotah, Mahkahta, Henton, Ramsey, Washington, Itasca, Pembina and Iowa. The County of Wabashaw alone, encompassed the *present day* southern portion of the present day state of Minnesota and beyond.

With the treaty cession to the United States in 1851, the trust responsibilities of the United States and its agents to the Mdewakanton Dakota Sioux bands, was clearly established in the form of rights, remedies, payments and annuities granted to the bands, and to the individual members of said bands. *See Mdewakanton & Wahpakoota Bands of Sioux Indians v. United States,* 57 Ct.Cl. 357, 359-61 (1922). App. 19.

The 1851 and 1858 treaty provisions recognize a "self-executing" right of the *individuals*, not just the band/tribe, that allows a protected individual within the Mdewakanton band, the clear right recognized by Congress, to pursue individual rights, remedies and privileges, associated with the life, liberty and property as protected by said Treaty. *Treaty between the United States and the Mdewakanton and Wahpakoota Bands of Dakota or Sioux Tribe of Indians*, Articles III and IV, March 31, 1859, 12 Stat.1031. The self-executing treaty provisions of the Treaties of 1851 and 1858, allowed for any individual Mdewakanton Indian to assert their own property and privacy interests and to use the (later) due process clause of the U.S. Constitution and the treaty rights to preserve and protect said rights. *See Kolovrat v. Oregon*, 366 U.S. 187 (1961) (recognizing a self-executing treaty right for lineal heirs).

D. 1862 SIOUX UPRISING

The following recorded firsthand accounts of the dealings with the United States, document the historical experiences of the Dakota Sioux leading up to the forced removal of the Dakota from Minnesota:

> Under the treaty of Traverse des Sioux [1851] the Indians had to pay a very large sum of money to the traders for old debts, some of which ran back fifteen years, and many of those who had got the goods were dead and others were not present, and the traders' books had to be received as to the

> amounts, and the money was taken from the tribe to pay them. Big Eagle's Account, *Through Dakota Eyes*, at 24 (Gary Clayton and Alan R. Woolworth, eds. 1988).
>
> As the summer advanced, there was great trouble among the Sioux – troubles among themselves, troubles with the whites, and one thing and another. The war with the South was going on then, and a great many men had left the state and gone down there to fight. A few weeks before the outbreak the president [Abraham Lincoln] called for many more men, and a great many of the white men of Minnesota and some half-breeds enlisted and went to Fort Snelling to be sent South....

Id. at 25.

> At last Maj. Galbraith went to work about the agencies and recruited a company of soldiers to go South. His men were nearly all half-breeds. This was the company called the Renville Rangers, for they were mostly from Renville county.

Id. at 25-26.

> At last the time for the payment came and the Indians came in to the agencies to get their money. But the paymaster did not come, and week after week went by and still he did not come. The payment was to be in gold. Somebody told the Indians that the payment would never be made. The government was in a great war, and gold was scarce,

> and paper money had taken its place, and it was said the gold could not be had to pay us. Then the trouble began again and the war talk started up. Many of the Indians who had gathered about the agencies were out of provisions and were easily made angry. Still, most of us thought the trouble would pass, and we said nothing about it. I thought there might be trouble, but I had no idea there would be such a war. Little Crow and other chiefs did not think so. But it seems some of the tribe were getting ready for it.

Id. at 24-27.

> Among the many people in the reservation community were the Franco- and Anglo-Dakotas.... Officials of the United States Office of Indian Affairs conducted a census in 1855-56 that showed about 650 mixed-bloods of Mdewakanton descent in Minnesota. [APP 97-102]. Some of the group had merged with the white population of eastern Minnesota, but most were living on the reservation. After 1856 the developing farm programs on the reservation provided an incentive for others to join them. Many also worked on the reservation being employed by the traders as clerks or the government as interpreters. Juggling two distinct cultures at the same time – occasionally serving one and then the other – repeatedly placed the Franco- and Anglo-Dakota people at the centers of controversies.

Id. at 12.

> In 1862 many Dakota Indians who continued to live by the hunt began feuding with traders over the issue of past payments for debt. Funds from the 1858 treaty, it was believed by the Dakotas, had paid all past debts owed by individual Indians. Traders, on the other hand, argued that Indians had received credit after the treaty. By the spring of 1862, traders and their Indian customers were on the verge of a violent break. Many of the mixed-bloods were caught squarely between two groups.

Id. at 12.

> The conflict over traders' debt was only one of several important issues creating unrest. Indian agents as early as 1860 had adopted the practice of handing out annuity money and food only to Indians who showed some inclination to become farmers.

Id.

The 1862 Uprising events began simply enough when four young Dakota Sioux men from Shakopee's village found themselves in Acton, Minnesota:

> The tension had escalated in early August 1862, and several small hunting and war parties left the reservations. These groups were dominated by young men, some of whom were angry over the way whites had treated their people and the failure of traders to assist the Indians.... One of these parties from Shakopee's village on Rice Creek met and quarreled with Robinson

> Jones, a settler after they had taken egg's from settler's hen's nest, near the small community of Acton. The impassioned warriors turned on Jones, killing him and several members of his family and creating the spark that ignited the war.

Id. at 34.

Another account was recorded by Cecelia Campbell Stay on the first day of the Outbreak, at the Redwood Agency where she lived with her Dakota mixed-blood family:

> Another incident I want to bring before my readers is that same day [Aug.18, 1862], [I] shall name our family first for we lived at that house, where some taken prisoners were congregated. There was Grandmother Mrs. Margaret Scott Campbell [Campbell], Uncle Hypolite [and his] wife Yuratwin (a cousin of Standing Buffalo) and two children John & Theresa, Uncle Baptiste, Uncle Scott, father, A.J. Campbell, mother, sister Emily 15 years old, myself (Celia), 13 and Mary 9, Joseph 7, Martha 5, Willie 2, Stella about 7 weeks old. All those who were fleeing fugitives [and were] brought back to us were Mrs. Antoine Findly and step-son Billy Findly, Louis Martin [and his] wife and three children. Mrs. Matilda Vanosse [with] one child on her back ... she would fall in a fit.... Uncle Scott went, met them and between them they got her to the house.... Mrs. Findly never left us during the seven weeks of our captivity until [she was] safe back to Traverse des Sioux

> [and] out of danger. Cecelia Campbell Stay's Account.

Id. at 51-52.

> One of the soldier band among the hostiles stood up and answered that they knew the white people were too strong for them, but their object was to make the white women and children stay with them and suffer with them when the whites drove them out of the country. Following this speech, the hostile warriors mounted and before riding away they said that all the half-breeds and friendly Indians must come to their camp and unite forces with them the next day, other-wise they would return and force them to join. Victor Renville's Account.

Id. at 193.

> After the hostiles left, an old man, Nach-pi-ya-wi-ca-xta [Cloud Man], got up and said that these hostiles, after breaking all treaties and causing the friendly Indians to lose their annuities, were now planning to make them all captives. He also said that they must send out messengers to call all the camps together and prepare to attack the hostiles.

Id. at 193-94.

> When word was received of the approach of more hostiles, the friendly Indians struck camp and went up the river, pitching camp on the west side. The hostiles followed and camped a mile away. The friendly Indians

> then held a council and sent General Sibley a letter written by Thomas Robertson, who had escaped from the hostile camp. He, with a comrade, carried the letter to Fort Ridgely. Robertson was allowed to enter the fort blindfolded and was able to explain to Sibley what the friendly Indians were trying to do. He also carried Sibley's letter back to the friendly camp with the message that the general was not fighting his friends among the Indians and half-breeds.

Id. at 94.

> Early in the morning the half-breeds and friendly Indians rode out ahead of the attacking hostiles and by showing themselves here and there, gave plenty of warning. When the attack began the soldiers were ready and by the unexpected use of cannon the enemy was driven off. The hostiles now rode back to their own camp and began to make ready to escape. This gave the friendly Indians and half-breeds an opportunity to ride into the hostile camp and snatch the women and children captives from the Indians who were about to carry them off. They carried these prisoners to their own camp which they defended with ditches and breastworks. Over the camp of the friendly Indians floated a white flag as a sign that they were not hostile to the whites.

Id. at 238. APP112.

Following the uprising, thousands of Dakota Sioux were taken captive regardless of whether they acted against or in assistance of the whites. These Dakota men, women and children, (including half breeds and mixed bloods), were held captive for many months at Camp Release, Fort Snelling and other sites. APP112. Sibley's forces scoured the country for hostile Indians and succeeded in taking more than four hundred. The troops then rushed in upon what remained of the hostile camp and took all the captives and supplies. They then established a military tribunal and tried their Dakota prisoners. Those found to have committed atrocities were imprisoned and many of them were sentenced to death.

> Two days before the departure of the prisoners, the rest of the captured Sioux were sent down the river to Fort Snelling. They, too, were attacked along the way. As they passed through Henderson, they were set upon by the enraged populace with guns, knives, clubs, and stones. Several were injured, and one infant was so badly hurt that it soon died. Those who survived this assault and the following winter remained in a dismal encampment on the flats below Fort Snelling for about six months, tormented by wild rumors concerning the fate of their menfolk and perpetually in danger of being killed by parties of whites who repeatedly threatened to break through the wooden fence erected for their protection. Roy W. Meyer, *History of the Santee Sioux*, at 128 (Revised ed. 1993). APP1,9-20.

> When the trials were completed, the general assumption was that all 303 of the men condemned to death would be speedily hanged. President Lincoln, however, intervened and ordered General Pope to send him the complete trial record.... Lincoln's action was, of course, displeasing to the people of Minnesota, whose spokesmen, Governor Ramsey and the congressional delegation, had been insisting that the Indians must all be executed or lynch law would prevail....

Id. at 128.

> A last-minute change of schedule was the removal of one name from the list of those to die. The remaining thirty-eight condemned mounted the scaffold chanting their death song, reluctantly allowed the white caps to be adjusted over their heads, and then attempted to grasp each other's hands in a final gesture of solidarity. The trap was sprung by William Duley, some of whose family had been killed at Lake Shetek. His personal desire for revenge and that of the spectators was satisfied as thirty-eight Sioux corpses dangled from the scaffold. [The largest mass execution in Unites States history]. When all had been pronounced dead, the bodies were buried in a shallow grave nearby, from which they were shortly exhumed for use as cadavers by local physicians. [including, by Dr. W.W. Mayo]

Id. at 129-30; *also see* Loren Dean Boutin, *Cut Nose: Who Stands on a Cloud*, at 93-110 (2006). APP5.

> Although the newspapers of Minnesota were calling for the expulsion of all Indians from the state, attention naturally centered early in 1863 about the Sioux who had been taken into custody at Camp Release. These people – the prisoners held at Mankato and the larger group at Fort Snelling – spent a miserable and anxious winter. The condemned men probably fared better than their families. Out of the 350 or more, only thirteen died during the winter, as against about 130 in the camp at Fort Snelling.

Id. at 136. APP1,9-20.

> Under such pressure from their constituents and their political opponents, both the Minnesota legislature and the congressional delegation moved rapidly to bring about the expulsion of the Sioux from the state. As early as Governor Ramsey's special message to the legislature on September 9, 1862, the idea was broached of abrogating all treaties with the Sioux and reimbursing victims of the uprising from the annuities still due under the treaties.

Id. at 139-40.

> The advocates of outright extermination, though noisy, were not numerous among people whose opinion carried much weight in the determination of policy. Even Galbraith, who confessed to "feelings of exasperation against these savages" and who was emotionally involved by the need for self-justification, conceded in his official report

> that "few will contend that the Sioux and all other Indians can be '*exterminated*' just now."

Id. at 141.

> [Rev. John] Williamson wrote his mother from St. Joseph that if all 1,300 were crowded onto one boat, it would be "nearly as bad as the Middle Passage for slaves." He later described conditions on board the *Florence*, saying that when 1,300 Indians were crowded like slaves on the boiler and hurricane decks of a single boat, and fed on musty hardtack and briny pork, which they had not half a chance to cook, diseases were bred which made fearful havoc during the hot months, and the 1,300 souls that were landed at Crow Creek June 1, 1863, decreased to one thousand.... So were the hills soon covered with graves. The very memory of Crow Creek became horrible to the Santees, who still hush their voices at the mention of the name.

Id. at 146.

For years following the Sioux Uprising in 1862 and the forced removal of the Dakota from Minnesota, the State led by the profiteer Alexander Ramsey as Governor, placed a bounty on any Sioux person found in Minnesota. The bounty was for $200.00 for each Sioux scalp that could be shown as proof of the killing. *New York Times*, August 18, 1863;APP120.

> Whatever the end of the Sioux Uprising may have meant to the white man – a chance to speculate in land or acquire a farm in lands previously unavailable, a demonstration of the Lord's saving power over men about to be executed, or something else for the Sioux it meant just one thing: catastrophe. It meant their expulsion from the land where they and their ancestors had lived since the immemorial past, and more than that, it meant the shattering of whatever unity the Santee bands had possessed. Never again were the Mdewakantons, Wahpekutes, Sissetons, and Wahpetons one people, occupying a single fairly well defined land area. Henceforth they were scattered over states and provinces, with hundreds of miles separating their dispersed settlement and the lands between rapidly filling up with white men, who learned eventually to tolerate the Indian, if only to exploit him, but never to accept him as an equal.

Meyer, supra at 132.

The Uprising itself, in August 1862, was partly precipitated upon a known policy of planned removal and/or genocide developed by the officials of United States, and with local counterparts such as Alexander Ramsey (Indian Agent and Governor of Minnesota Territory) and Henry Sibley (Governor and Army Colonel). *Marx Swanholm, Alexander Ramsey and the Politics of Survival*, 16-17 (1977). These two gentlemen ended up profiting handsomely from financial and land transactions immediately before

and following the 1862 uprising and the passage of the 1863 Act. *Id.* at 12-13. Federal executive branch officials continued to open up the valuable lands of the Mdewakanton, even after the 1858 treaty, to usurpation by settlers and land speculators in clear violation of all existing treaty rights with the Mdewakanton bands. The purposeful act of depriving the Mdewakantons of their annuity payments and treaty benefits between 1858 and 1862, created a dangerous and life threatening situation for the people. APP116-18.

E. THE IMMEDIATE AFTERMATH OF THE 1862 UPRISING

Some Minnesota Sioux had remained loyal to the United States during the uprising. When the February 16, 1863 Act was passed, allegedly abrogating all previous treaties and annuities between the Mdewakanton and the United States prior to the 1862 Uprising, the United States attempted to utilize a knee-jerk, across the board abrogation process, to divest any and all of the land, property, annuities, property interests, privileges, and future interest and lives of even the *loyal* Mdewakanton Sioux people, despite the fact that many Mdewakantons never warred against the white settlers or the U.S. Army. However, at the same time that Congress stripped the Minnesota Sioux of their Minnesota lands, it authorized the Department of Interior to allocate up to eighty acres of that land to each loyalist. Act of March 3, 1863. 12 Stat.652-54, Sections 1 and 9.

F. THE MARCH 1863 ACT AS AN ENABLING ACT

The March 3, 1863 Act (hereinafter "the 1863 Act") is an enabling statute with an enabling provision for present, future and subsequent legislation, including the Appropriations Acts of 1888, 1889 and 1890, and the 1980 Act.

> Enabling statute: Term applied to any statute enabling persons or corporations, or agencies to do what before they could not. It is applied to statutes which confer new powers.

Black's Law Dictionary, 526 (6th ed.1996).

> Enabling clause: That portion of the statute or constitution which gives to governmental officials the power and authority to put it into effect and to enforce such.

Id.

In moving to pass the abrogation of certain existing treaty rights of the Minnesota Dakota Sioux bands, to land and annuities, Congress was utilizing its political authority to pursue the goal espoused by many in the United States and local Minnesota government – to exterminate or eradicate the race of the Sioux from Minnesota. *Swanholm*, *supra* at 16. Even with the pressure and influence from power-brokers such as Alexander Ramsey, the sweeping move to wipe out all existing treaty rights did not succeed. *See* Debate over the 1863 Act, APP22-34.

Although the allocation of land to the loyal Mdewakantons provided for in Section 9 of the 1863 Act was not immediately implemented, it led Congress to further provide for the Loyal Mdewakanton in 1888, when it authorized the Department of Interior to expend additional funds on their behalf. Congress recognized that when it declared the Minnesota Sioux's treaties, annuities, and allocation of land forfeited in 1863, it intended to make an exception for the Loyal Mdewakanton, whose annuity was valued at approximately $1,000,000. *See* 19 Cong.Rec. H2976-77 (daily ed. Apr. 14, 1888) (Statement of Rep. MacDonald). As a result of a failure of executive branch officials to implement the 1863 Act, many loyal Mdewakanton were rendered homeless. *Id.* at 2977. The 1888 Act provided benefits for the full-blooded Mdewakanton. Because of the administrative difficulty of determining which Mdewakanton remained loyal during the 1862 uprising, Congress determined that presence in Minnesota on May 20, 1886, served as an adequate *proxy* for "friendliness." (JA0320). Therefore, the initial and most recognizable definition of "friendly" or "Loyal Mdewakanton," is if there is evidentiary proof of the individual Mdewakanton ancestor actually assisting in rescuing or protecting the white settlers during the 1862 uprising, as many were recognized in doing.[1]

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[1] Therefore, it is obvious that the other groups such as the Sioux Scouts and Soldiers (Elrod List), etc., also would qualify as

(Continued on following page)

An act in 1889 added a further benefit provision calling for each Loyal Mdewakanton to receive "as practicable, an equal amount in value of this appropriation...." *Act of 1889*, 25 Stat.980, 992-93. In a third appropriation act in 1890, Congress added $8,000 and adopted the same substantive provisions as the 1889 Act, except that it expressly stated that the further appropriated amount was to support Indians of both "full- and mixed-blood." *Act of Aug. 19, 1890*, 26 Stat.336, 349. The latter two acts called for funds to carry over if the Department of Interior did not spend them by the end of the fiscal year, ensuring that the Loyal Mdewakanton and their descendants and heirs would benefit from the appropriation into the future.

Utilizing the proxy determination of lineal descendancy to ascertain which Mdewakanton lived in Minnesota on May 20, 1886, Agent Walter McLeod took a census listing all of the full-blood Mdewakanton. (*See* JA0237-0247;JA0315). Inclusion on the McLeod list has been deemed by the Agency to create a rebuttable presumption that an individual met the eligibility requirements of the subsequent 1888, 1889, and 1890 Acts. (*See* JA0059;JA0320).

On January 2, 1889, Robert B. Henton, Special Agent for the Department of Indian Affairs, took a second census of those Mdewakanton living in

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Loyal Mdewakantons, along with the proxy definition ancestors. APP37-41,95-96.

Minnesota since May 20, 1886. (*See* JA0315;JA351-0363;JA0323). The McLeod and Henton censuses (together, "1886 census") were initially used to determine who would receive the benefits and in what amounts appropriated under the 1888, 1889, and 1890 Acts.

The task of determining those beneficiaries of the various Acts did not cease with these two censuses. Henton's duties included purchasing various items on behalf of the Mdewakanton, including land. *Wolfchild I*, 62 Fed.Cl. at 528 n.7. Later, James McLaughlin was given the authority to make an additional census. In a letter dated February 20, 1899, McLaughlin was instructed to make a "complete census of the Mdewakanton (sic) band of Sioux Indians in Minnesota...." APP62. Part of his task was to ensure any Indians who were improperly enrolled as members be prevented from receiving additional payments. *Id.* McLaughlin completed his task in March of 1899. APP65-67.

It is logical to recognize that the congressional acts concerning the Loyal Mdewakantons subsequent to the 1863 Act, were designed to implement the reserved and self-executing treaty rights of Loyal Mdewakanton as recognized in Section 9 of the 1863 Act. As an enabling act, Section 9 of the March 3, 1863 Act is self executing as to individual rights, privileges and remedies for the Loyal Mdewakantons and their heirs.

The self-executing rights to potentate lineal descendancy of the Mdewakanton Sioux continued to be recognized in the 1868 Treaty of Fort Laramie. The Ft. Laramie Treaty of 1868, included Chief Wabasha III, a direct potentate lineal descendant of Chief Wabasha who signed the 1851 and 1858 treaties as a recognized signatory. The Fort Laramie Treaty of 1868 also contained self-executing provisions affording rights to assert individual rights, remedies and privileges to preserve and protect property, property interests and other personal rights.

Article I of the Fort Laramie Treaty provides:

> If bad men among the whites, or among other people subject to the authority of the United States shall commit *any* wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the law of the United States, and also reimburse the injured person for the loss sustained (emphasis added).

Id.

The Fort Laramie Treaty of 1868 postdated the 1863 Act, and is still good law, as evidenced in *United States v. Sioux Nation of Indians*, 1448 U.S. 371 (1980); and *Elk v. United States*, 87 Fed.Cl. 70 (2009). Since Chief Wabasha III was an invited signatory on behalf of the Mdewakanton/Santee Dakota Sioux, this indicates that Congress continued to recognize the

Mdewakanton Sioux still held individual rights and interests including potentate lineal descendancy rights. If the Mdewakantons had no existing self-executing potentate rights after Congress passed Section 1 of the 1863 Act, Chief Wabasha III would not have been invited to sign the 1868 Treaty of Ft. Laramie on their behalf.

It is clear that the individual self-executing rights of the earlier treaties (1837, 1851 and 1858) were existent and preserved, particularly as to the Loyals, even following the 1863 Act of Congress. The 1868 Ft. Laramie Treaty recognized the important right of potentate lineal descendancy of the Mdewakanton Sioux. The canons of construction must favor the rights of the individual Indian if any ambiguity exists as to treaty or congressional statute interpretation, as here. *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658, 675-76 (1979); *Minnesota v. Mille Lacs Band of Chippewa Indians*, 562 U.S. 172, 200 (1999); *United States v. Dion*, 476 U.S. at 740.

The 1837, 1851 and 1858 Treaties predated the 1934 Indian Reorganization Act, as did the 1868 Fort Laramie Treaty. The individual, self-executing treaty rights continued to exist through lineage and heirship, and survived the passage of later acts of Congress not explicitly abrogating these rights, including the 1934 IRA, and the later acts leading to the formation of the Shakopee Mdewakanton Dakota Sioux Community, the Lower Sioux Indian Community and

the Prairie Island Indian Community. *See Elk v. United States*, 87 Fed.Ct. 70 (2009).

REASONS FOR GRANTING THE PETITION

III. TRUST EXISTED SINCE 1863

By recognizing the importance of Section 9 of the March 3, 1863 Act as confirmation of the existence of a trust corpus in land and rights in favor of the "Loyal Mdewakantons and their heirs, forever," the Federal Circuit Court of Appeals acknowledged that the 1863 Act in fact recognizes congressional intent to acknowledge the existence of the trust corpus for the Loyal Mdewakantons, prior to and at the time of the enactment of the Act of February 16, 1863, 12 Stat.654. The Panel emphasized the lower court's finding on the issue. *Wolfchild I*, 62 Fed.Cl. at 542; Order of March 10, 2009, p.20.[2]

The fact that the Panel recognizes this important trust finding of the Trial Court reemphasizes the fact that the trust corpus was still in existence in 1863, in 1888, 1889, 1890, 1934, 1969 and again in 1980. The trust cannot be terminated by anything but clear

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[2] In pertinent part, the March 3, 1863 Act, Section 8 states, the intent "[T]o set apart of the public lands, not otherwise appropriated, eighty acres in severalty to each individual of the before-named bands who exerted himself in rescuing whites from the late massacre [by] said Indians. The land so set apart ... shall be an inheritance to said Indians and their heirs, *forever*. Act of March 3, 1863, 12 Stat. at 654." (Emphasis added).

congressional intent to do so. The trust corpus was never clearly terminated, but was only furthered by appropriation and the statutory enactments following the 1863 Act. (JA00455-459). The trust was intended to exist for *all* heirs of the Loyal Mdewakantons, *forever*. The attempts prior to 1863 to fully implement a policy of genocide and extermination of the Mdewakantons from Minnesota, regardless of their participation in the uprising, were halted by Congress in 1863 with the passage of Section 9 of the 1863 Act. The subsequent legislation attempted to expand the unimplemented rights and remedies of the trust, protected for the Loyal Mdewakanton beneficiaries over the years.

Despite the fact the evidentiary record before the Trial Court had not yet been fully developed or completed prior to the interlocutory appeal of the two certified "Trust" questions, the Federal Circuit made critical findings on genuine issues of material fact in dispute in the underlying litigation, to reach the Panel's March 10, 2009 decision.

This litigation concerns valuable past, present and future rights and remedies of over 22,000 potential beneficiaries, i.e., the actual lineal descendants of the Loyal Mdewakantons. With its Order of March 10, 2009, the Panel, with the single stroke of a pen, has wiped out and destroyed the viable and legitimate claims, remedies and rights of over 22,000 Native American citizens without a trial. The Panel voted to reverse the decisions of the Federal Court of Claims finding that a trust did in fact exist during

the time of the "1886 Lands" appropriation in 1888, 1889 and 1890. In reversing that decision, the Panel has made a glaring and critical mistake in determining, without a trial, that the three Minnesota Communities are largely comprised of only lineal descendants. March 10, 2009 Order, p.8.

The Panel ignores the fact that the beneficiaries and/or lineal descendants are a defined class, but not yet fully and factually determined by the Trial Court. Initially, the Panel misstates the legal reference to the beneficiaries/lineal descendants. The true beneficiaries/lineal descendants are descendants of the "Loyal Mdewakantons," and not just the "1886 Mdewakantons." This is a critical distinction, in that the Loyal Mdewakantons are defined as trust beneficiaries within Section 9 of the 1863 Act itself (enabling act). The language of the 1863 Act indicating an " ... inheritance to said Indians and their heirs, forever," is a strong, self-executing declaration of the intent of Congress to benefit the Loyals.

The Panel appears to follow its own distorted view of the recent and present day makeup of the enrollment of the three communities, based on the misinterpretation of statistics.[3] The present day membership of the three communities may be made up of a significant majority of true lineal descendants, but the Panel ignored the fact that there are

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[3] Many of the Plaintiffs question whether all enrolled members are actual lineal descendants.

thousands additional, rightfully entitled, true lineal descendants of the Loyal Mdewakantons, that are *not* recent, past or present enrolled members of the three Minnesota communities, even though they may be as or more entitled to membership enrollment than many members that are or have been enrolled. The Panel's conclusion that 95% of all of the true lineal descendants were enrolled in the present communities is a factual finding on an issue in dispute in this case. This incorrect conclusion explains the Panel's lack of focus within the Opinion on interpreting the trust existence and 146 year agency "trust" treatment, management and handling of these lands and issues. The Panel likely believed that the number of persons likely affected is small rather than in excess of 22,000 living descendants Congress sought to benefit by enacting Section 9 of the 1863 Act.

The Panel ignores the fact that the 1863 Act is an enabling act and that the Appropriations Acts were clearly intended to be used to implement land and property interests, including trust corpus interests, for and on behalf of the lineal descendants of the Loyal Mdewakantons. The Panel never explained how it concluded that Section 9 of the 1863 Act and the Appropriations Act of 1888, 1889 and 1890 are unrelated.

The Appropriation Acts, in this context, must have a trust corpus in which to function as intended. These Acts of 1888, 1889 and 1890 did not create the trust – the trust existed from the 1851 and 1858

treaties, as preserved in Section 9 of the 1863 Act. Without the Appropriation Acts there would be no clear direction for the trustee. The certified questions from the Trial Court do not ask whether or not a trust was created by the 1888, 1889 or 1890 Acts. The question is "whether a trust was created *in connection with* and *as a consequence* of the 1888-1890 Acts...." The Appropriation Acts did not themselves *create* the trust. The enabling 1863 Act, as executed through the 1888-1890 Acts, clearly establish the existence of a trust. This creates a conflict of holdings within the Federal Circuit Court of Appeals, as stated below.

IV. JUDICIAL ESTOPPEL

"'Judicial estoppel' applies when a party takes a later position that is inconsistent with a former position in the same dispute, on which the party had been successful and had prevailed based on the former position." *Bonzel v. Pfizer, Inc.*, 439 F.3d 1358, 1362 (Fed.Cir.2006). This Court has listed three factors which are proper to consider in determining whether judicial estoppel applies: (1) a party's later position must be "clearly inconsistent" with its earlier position; (2) the party succeeded in persuading a court to accept that party's earlier position; and (3) whether "the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001) (citations omitted). Each of these

factors are present here. In essence, the Federal Circuit Court of Appeals has sanctioned the use of a litigant taking different positions to achieve its intended result. This runs directly afoul of the principles enumerated in *New Hampshire*.

A. The Government has argued mutually exclusive provisions: a trust relationship existed; and its current position that one does not.

In this litigation the United States consistently argued there is not now, and there has never been a trust relationship. However, in the past the United States has argued just the opposite: that is, there was a trust. Despite this conflict, the United States not only was allowed to proceed with its new theory, its new theory was adopted. To apply judicial estoppel, this Court must compare the United States' latter position with its current position. The United States' petition for discretionary appeal in this case asserted that the "Appropriation Acts" did not create a trust relationship between the Plaintiffs and the United States. It further contended Congress terminated the trust with legislation enacted in 1980. Petition at 10-18. In earlier cases, the government argued the existence of a trust arising under the 1863 Act and/or the Appropriation Acts and that the 1980 Act continued rather than terminated the trust.

First, in *Cermak v. United States,* U.S. C.O.F.C. Case No. 01-568, the United States argued that the

1863 Act and/or the Appropriation Acts created a trust. (JA06045).

Second, the United States in *Cermak v. Babbitt,* U.S. Dist. Court (Minn.) Case No. 98-1248, filed a motion in 1999 to dismiss the plaintiffs' claims arguing that a *trust arose* under either the 1863 Act and/or the Appropriation Acts:

> ***The Department's position regarding Indian Land Certificates was consistent over the years.*** *See* Ex. G, Letter from Acting Assoc. Solicitor, Indian Affairs, to Commissioner of Indian Affairs at 3 (May [sic] 19, 1974) (describing the interest in Indian Land Certificates to be either a tenancy at will or defeasible interest) (emphasis added).

The government's cited 1974 letter concluded, "[t]he lands *are held in trust* by the United States with the Secretary possessing a special power of appointment among members of a definite class." (JA00396) (emphasis added).[4]

In *Cermak* the United States argued that the Indian Land Certificate scheme was the Department's reasonable interpretation of its trust obligations under the 1863 Act and/or the 1888, 1889 and

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[4] The United States earlier used this same argument in support of the Interior Board of Indian Appeals' position of the existence of a trust. "The lands are held in trust by the United States with the Secretary possessing a special power of appointment among members of a definite class." *Brewer v. Acting Deputy Assistant Sec'y*, 10 IBIA 110, 119, n.8 (1982).

1890 Acts. The United States even argued the Department's position under the 1863 and Appropriation Acts should receive *Chevron* deference. *Id.* at 22.[5]

As to the 1980 Act, the government argued that the rights of Plaintiffs were "grandfathered" and unaffected by the 1980 Act. *Id.* at 8-9, 16.

In its submission dated April 27, 1999, the government went further stating, "[a]s Congress contemplated, the named individual holders of Indian Land Certificates (such as John Cermak) would be safe in their use and possession until their death after the 1980 Act." *Id.* at 5.[6]

Third, the United States, in its February 29, 2008 brief in opposition to the Cermaks' appeal in the

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[5] Additionally, in order to avoid the reach of the Quiet Title Act, the government conceded the 1886 Lands were trust lands, "If the Plaintiffs wish to claim that the Certificates 64 and 65 were actually allotments issued to John Cermak under the GAA, then these lands would be trust or restricted Indian lands and fall under the QTA's exception." *Id.*

[6] As the United States knows or should know, not all the named individual holders of Indian Land Certificates are dead. For example, one plaintiff, the very much alive Morris Pendleton, received his Certificates in 1979 (Att. E). The United States in this matter failed to account for the "grandfathering" of Morris Pendleton's beneficiary rights – and all others similarly situated – and his concomitant claims for trust mismanagement. The limited purpose of showing the United States' earlier, inconsistent position on the 1980 Act here is to show the United States argued in 1999 that the 1980 Act *continued* the trust. This is in direct contradiction to its position now that the 1980 Act *terminated* the trust.

United States Court of Appeals for the Federal Circuit, again argued: that a trust arose under the 1863 Act and/or the Appropriation Acts; that the 1980 Act altered, rather than terminated, the legal status of the trust lands; and subsequent assignees were "grandfathered in." The United States argued:

> In 1980, however, Congress did enact legislation that *altered legal status of the land* subject to the Indian Land Certificate program and placed those lands in trust for the Shakopee Mdewakanton Sioux Community as a whole.... *Section 3 of the 1980 Act made clear that all existing assignments, issued under the Land Certificate Program, were "grandfathered in" and unaffected by the legislation....*
>
> The Department acquired the lands at issue here under the three aforementioned appropriation acts that authorized the Secretary to buy lands for the benefit of certain Indians who were, or who were once affiliated with, the Mdewakanton Sioux. *See* Act of December 19, 1980 (stating that "all right, title and interest of the United States in those lands ... *which were acquired and are now held by the United States for the use and benefit of certain Mdewakanton Sioux Indians under [appropriation statutes]* are hereby declared to hereafter be held by the United States ... for the [Shakopee Community]") (emphasis added).

The litigation waged by the Cermaks is not only a prime example of the applicability of judicial estoppel

but also the need of this Court to settle the question as to the proper forum for such a claim.

Once the matter made its way to the Federal Circuit, the United States' position that the 1863 Act created a trust did not change. *See Cermak v. Babbitt*, 234 F.3d 1356, 1358-59 (Fed.Cir.2000), *pet. for cert. denied, Cermak v. Norton*, 532 U.S. 1021 (2001).

It is respectfully suggested the Court grant the petition to rectify the perverse history of the manner in which these claims were addressed which allows the government to argue mutually exclusive positions.

B. The United States was successful in the earlier litigation.

The United States District Court and the United States Court of Federal Claims adopted the United States' earlier positions regarding the existence of a trust corpus to dismiss the Cermaks' claims. The Cermaks' claims started in the United States District Court for Minnesota. *See Cermak v. Babbitt*, 1999 U.S.Dist. LEXIS 22390, No. 98-1248 (D. Minn. July 12, 1999). The matter was transferred to the United States Court of Federal Claims. *Id.* The Cermaks appealed to the Eighth Circuit which transferred the appeal to the Federal Circuit. *Cermak v. Babbitt*, 234 F.3d 1356, 1358 (Fed.Cir.2000).

While *Babbitt* involved a jurisdictional question, the question hinged on the status of the land. The

United States argued jurisdiction was lacking because the land was "held in trust by the United States for the Community's benefit." *Id.* at 1359. The Federal Circuit accepted the government's argument and affirmed the transfer. *Id.* at 1364.

Thereafter, the Court of Federal Claims held the 1980 Act "transferred property that the United States held in trust for the individual Mdewakanton Sioux, to the Sioux Community." (JA06115). The court transferred the case to Minnesota. (JA06120).

Back in Minnesota, Judge Doty agreed with the government that "such lands were held in trust for the use of certain Indians" and cited the IBIA decision in *Brewer* as support:

> The AAD [BIA Acting Area Director] based his decision not to reissue certificates in favor of plaintiffs on the agency's interpretation of the Act of 1863, whereby land was to be set aside for assignment or allotment to certain Indians, and its ruling in *Gitchel*. (Cermak AR Ex. 9, TOC.) The agency has consistently asserted that certificate holders such as John Cermak did not receive allotments and were not beneficial owners of a possessory interest in allotted trust lands. *See Brewer v. Acting Deputy-Indian Affairs*, 10 IBIA 110 (1982). Rather, such lands were held in trust for the use of certain Indians. *See id.* at 116. The Secretary of the Interior did not grant any permanent interest in the lands, *pending*

> *further legislation. See id.* at 117 (emphasis added).

Cermak v. Norton, 322 F.Supp.2d 1009, 1015 (D.Minn. 2004), *aff'd, Cermak v. United States,* 478 F.3d 953 (8thCir.2007).

The Federal Circuit, after consolidating *Cermak* with *Wolfchild I*, affirmed the dismissal of the Cermaks' breach of duty claims. It held the "Department of the Interior as trustee had discretion over the assignment" of trust lands:

> With respect to the *Cermak* plaintiffs' claim for breach of legal duty (referred to originally as a "breach of trust" claim by the Cermaks), the government did not breach a legally cognizable duty by refusing to assign the Certificates to Raymond and Stanley Cermak because no such duty existed. *See Gitchel*, 28 I.B.I.A. at 48; *Brewer*, 10 I.B.I.A. at 116-19; *see also Wolfchild I*, 62 Fed.Cl. at 528-29. The custom of assigning a certificate to a deceased holder's heirs was not always followed and was not guaranteed because the BIA treated the certificates as only conveying a right to use the land, subject to significant restrictions. *See Wolfchild I*, 62 Fed.Cl. at 528-29; *Wolfchild II*, 68 Fed.Cl. at 791.... That discretion was limited in the sense that a certificate of assignment could be issued only to a lineal descendant of loyal Mdewakanton. Otherwise, the Department of the Interior had discretion that could be exercised in a reasonable, non-abusive manner. Accordingly, the dismissal of the

> plaintiffs' claims of breach of legal duty in *Cermak* related to the government's refusal to assign certificates to the heir of John Cermak was appropriate.

Wolfchild v. United States, 72 Fed.Cl. 511, 525 (2006).

Despite the United States' earlier position that a trust existed, it now argues there is no such trust. The Federal Circuit failed to adequately address the topic. Strangely, it relied on the decisions cited above in support of the contention there never was a trust. *Wolfchild v. United States*, 559 F.3d 1228, 1247 (Fed.Cir.2009). In addition, rather than pointing out the United States' position in the various *Cermak* litigation matters, it analyzed statements made by the Interior Department in 1915 to defeat the judicial estoppel argument. *Id.* at 1247-48.

The United States previously argued there was a trust. However, the only analysis provided by the Federal Circuit dealt with isolated statements rather than the specific positions set forth above. *Id.* at 1254-55. The government has successfully argued mutually exclusive positions, a result clearly at odds with *New Hampshire*.

C. The ability to use mutually exclusive arguments resulted in an unfair litigation advantage.

The United States obtained an unfair litigation advantage by arguing mutually exclusive positions. "[A]bsent any good explanation, a party should not be

allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory." 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §4477, p.782 (1981).

> Judicial estoppel doctrine is equitable and is intended to protect the courts from being manipulated by chameleonic litigants who seek to prevail, twice, on opposite theories. The purpose of the doctrine of judicial estoppel is to reduce fraud in the legal process by forcing a modicum of consistency on the repeating litigant.

28 Am. Jur.2d Estoppel and Waiver §74, at 498-99 (2000) (footnotes omitted).

The Federal Circuit failed to address the judicial estoppel argument permitting inconsistent decisions by different Circuits. The result is far reaching unless addressed by this Court. The United States, or any other litigant, will be allowed to seek an unfair advantage by adopting a position that is beneficial to one Circuit proceeding and then adopt an entirely opposite position in another Circuit proceeding. The courts in the history of dealing with the trust created by the 1863 Act and the Appropriations Acts were manipulated by the United States. Different positions have been taken to satisfy the particular need at the time. This Court should accept the petition to redress this wrong.

The Panel's decision to reverse on the issue of the existence of a trust prior to 1980, literally obliterates

the rights of the lineal descendant beneficiaries instead of following the intent of Congress to *enhance* those trust rights with the 1980 Act. The three communities had no preexisting trust rights by themselves without the lineal descendants, to enhance. This determination by the Panel is a clear error of law and a clear abuse of discretion, and should therefore be reversed.

CONCLUSION

Respectfully, Petitioners would like to share a story with the Court, that hopefully, may help the justices view things through an alternative lens. This is the story:

> Years ago, white settlers came to this area and built the first European-Style homes. When Indian people walked by these homes and saw see-through things in the walls, they looked through them to see what the strangers inside were doing. The settlers were shocked, but it makes sense when you think about it: windows are made to be looked through from both sides. Since then, our people have spent many years looking at the world through your window. We hope today we've given you a reason to look at it through ours.

This story ... the lineal descendants' story ... needs to be heard. This Honorable Court is the hope of justice for the Indian people.

Respectfully submitted this 6th day of November, 2009.

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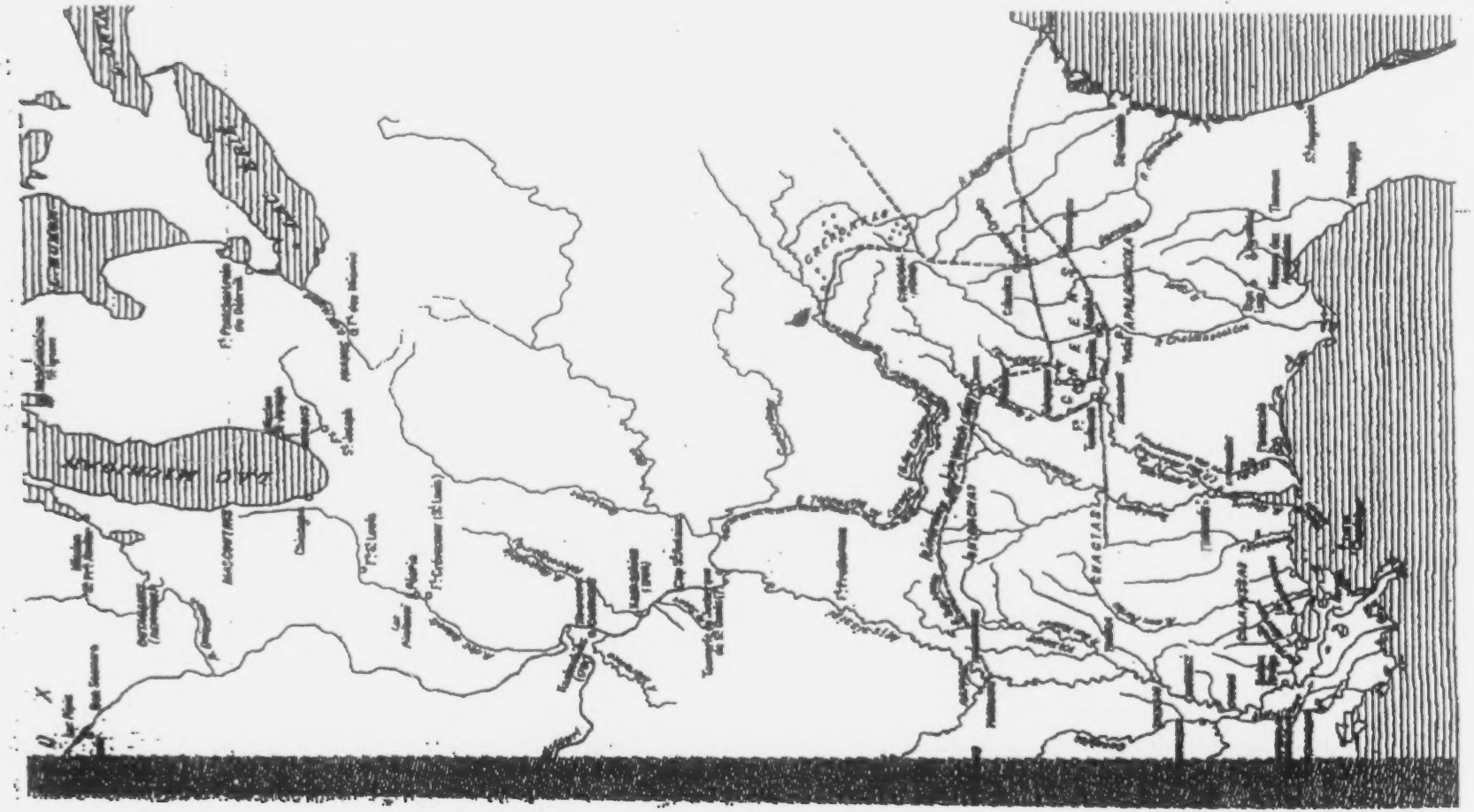
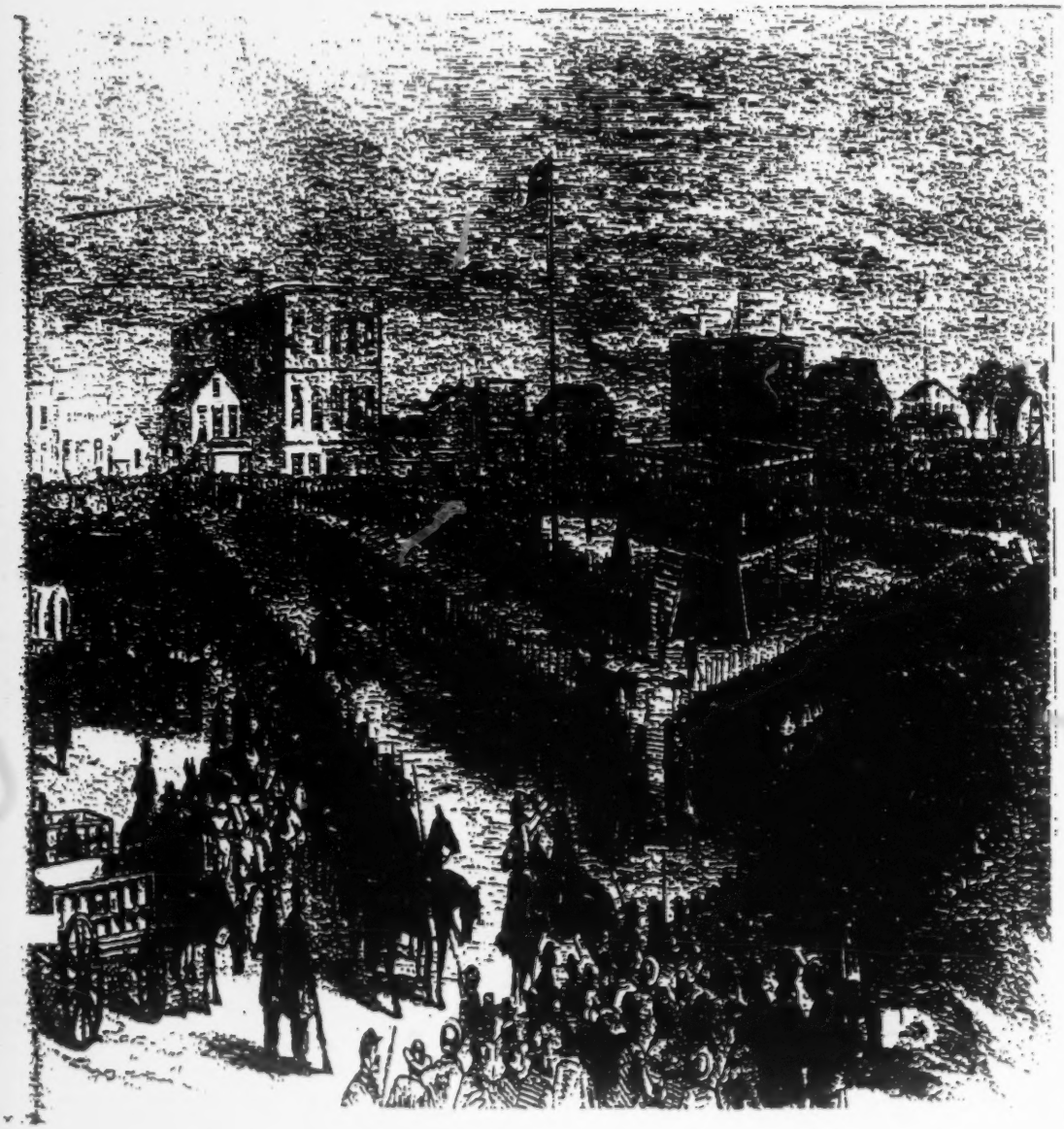
IN THIS DISMAL FENCED ENCLOSURE *on the Minnesota River below Fort Snelling, the uncondemned Sioux prisoners spent a miserable winter in 1862-63. Many died, and many became Christians.* PHOTO BY B. F. UPTON, 1862.

BEST AVAILABLE COPY



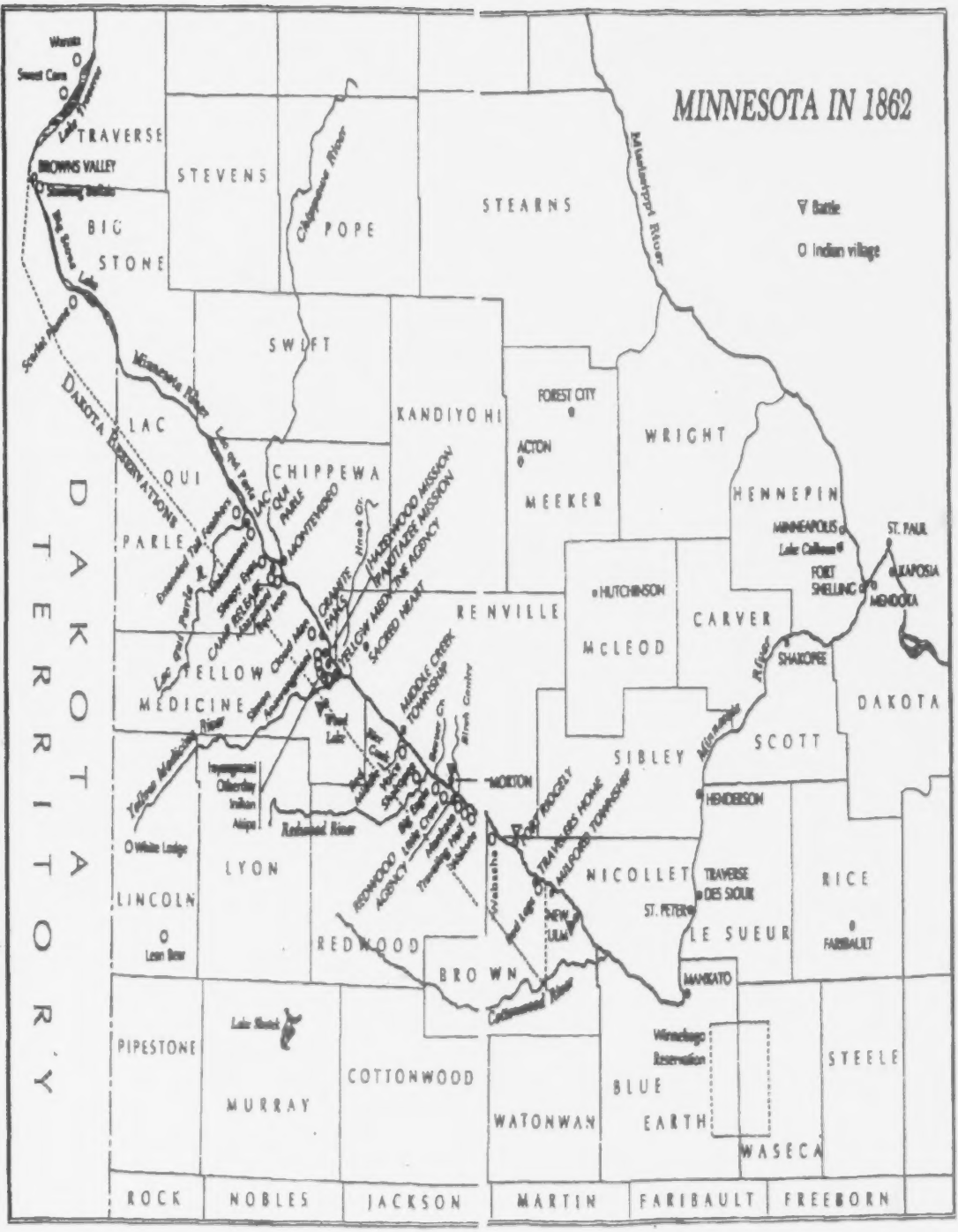
PEMBINA
ITASCA
MAHKAHTA
WAHNAHTA
DAHKOTAH
WABASHAW
IOWA
MINNESOTA
TERRITORY
showing the
ORIGINAL COUNTIES
1849-1851
SCALE OF MILES

THIS MAP *shows where the various splinters of the Dakota people settled or were imprisoned after the 1862 uprising.* MAP BY ALAN OMINSKY.



THE HANGING *of thirty-eight Sioux at Mankato on December 26, 1862, was witnessed by ranks of soldiers and crowds of civilians. Martial law was declared in the town to prevent violence.* DRAWING BY W. H. CHILDS FROM *Leslie's Illustrated Newspaper*, JANUARY 24, 1863.

App. 6


MINNESOTA IN 1862
Battle
Indian village
DAKOTA TERRITORY
TRAVERSE
BROWNS VALLEY
STEVENS
POPE
STEARNS
BIG STONE
SWIFT
KANDIYOHI
FOREST CITY
ACTON
WRIGHT
MEEKER
HENNEPIN
LAC QUI PARLE
CHIPPEWA
MINNEAPOLIS
ST. PAUL
FORT SNELLING
MENDOTA
HUTCHINSON
RENVILLE
McLEOD
CARVER
SHAKOPEE
DAKOTA
YELLOW MEDICINE
SIBLEY
SCOTT
MORTON
HENDERSON
LYON
NICOLLET
LE SUEUR
RICE
FARIBAULT
LINCOLN
REDWOOD
BROWN
MANKATO
PIPESTONE
MURRAY
COTTONWOOD
WATONWAN
BLUE EARTH
WASECA
STEELE
ROCK
NOBLES
JACKSON
MARTIN
FARIBAULT
FREEBORN

NORTHERN SUPERINTENDENCY.

* * *

Allow me to urge, in behalf of these people, that immediate orders be given to provide them with tents, so that they can have them on their arrival at their new homes, or as soon after as practicable. As before stated, they deserve the fostering care of our government.

I met with Senator Wilkinson yesterday, stated some facts to him, and he remarked: "The Winnebagoes deserve to be handsomely treated; they ought to be properly cared for."

One object in stating the number is as to the bill of transportation and subsistence en route, as well as data for your instructions to provide for the latter at their new homes.

A question will arise, as a precautionary act, whether their arms shall be restored to them. Their arms have been boxed, and the names of the owner labelled with a card. Colonel Crooks is strongly opposed to their being restored, and suggests that their value be given in some useful articles. From a conversation with Agent Balcomb I think he entertains the same opinion.

Another question arises, resulting from the recent scalping by the Winnebagoes of three Sioux Indians, whether these tribes ought not to be located some distance apart. I regard it as worthy of careful consideration. At present the Winnebagoes will outnumber

the emigrated Sioux, but the incident will travel among the entire tribe of the latter, and difficulties not otherwise anticipated may ensue. From the best information I can obtain, it appears that the Winnebagoes were incited to the act, thinking it would propitiate them in the kind regard of their Great Father at Washington, and, as a consequence, that they would be permitted to remain in Minnesota.

Very respectfully, your obedient servant,

CHARLES E. MIX

Hon. WILLIAM P. DOLE,
Commissioner of Indian Affairs.

No. 156.

HEADQUARTERS DISTRICT OF MINNESOTA,
DEPARTMENT OF THE NORTHWEST
St. Paul, Minn., May 26, 1863.

SIR: General Sibley has instructed me to enclose to you a copy, which you will find herewith, of a list of the Sioux Indians and half-breeds in camp at Fort Snelling, under the *surveillance* of the United States military authorities during the winter. The list was made December 2, 1862. There was a considerable number of deaths in the camp after the list was made out. Nearly fifty of the acquitted men, prisoners from the Mankato prison, were added to the number after the opening of the navigation. The families are mostly those of the condemned Indians now in confinement near Davenport, Iowa. The families of the half-breeds

who have land entered with their scrip on the Minnesota river, and of others with some reliable Indians who have been kept for use as scouts to the expedition about to take the field, were not despatched with the main camp to their new homes on the Missouri river.

Very respectfully, your obedient servant,

R. C. OLIN
Assistant Adjutant General.

Col. CHARLES E. MIX
Chief Clerk of Indian Bureau, now in St. Paul

FORT SNELLING, *December* 2, 1862.

Agreeably to Special Order No. 45, I herein return the census of the Indian camp, together with an inventory of all property, except such as I regard as strictly the personal effects of families.

NORTHERN SUPERINTENDENCY.

Census of the Indian camp, &c.

Heads of families.	Number in family.	Horses.	Oxen.	Wagons.	Chains.
WABASHAW'S BAND.					
Wabasha.....	8	1	2	1	1
Cauhipiyaha.....	5	2	2	2	1

Wahauhdiata	5	...	2	1	1
Okisemaya	5	...	2	1	1
Winona Tonka	6	...	2	1	1
Icazuntewin	3	...	2	1	1
Tiniyakpanin	8	...	2	1	1
Dowauhdinape	6	...	...	...	...
Hupaydinayiuwe	7	...	...	...	...
Towauhdiuapiwin	4	...	...	...	...
Hapun	7	...	...	...	...
Hupahu	4	1	...	...	...
Liyowin	5	...	...	...	...
Tukannapunwin	8	1	2	1	1
Wicinyan	3	...	...	...	...
Cegabuwtiwin	4	1	2	1	1
Jakiwiwina	7	...	...	...	...
Wahpiyadutewin	4	...	1	...	...
Hdoniciuin	6	1	...	1	...
Winona Dutuwin	4	...	2	1	1
Tokahewin	4	...	...	...	...
Tatehuihewin	9	1	...	...	...
Magasinawin	2	...	2	1	1
Hapaw	5	...	2	1	1
Tawicin	6	2	...	...	...
Wospi	6	...	2	1	1
Tahaya	9	...	...	...	...
Hotawinna	3	...	...	...	...
Kapopewin	5	...	...	...	...
Muhpiyahdegawin	5	...	2	1	1
Wenona	2	...	2	1	1
Total	165	10	31	17	15
PASSING HAIL'S BAND.					
Wasnhiyaydaw	7	1	2	1	1
Tatebota	8	3	2	1	1
Hapaunau	6	1	...	...	...

Tiojaujauwin	7	1	...	...	...
Saiciyidun	12	1	...	1	...
Taputadertawin	3	...	2	1	1
Waste	3	...	...	...	...
Tahaupuaya	5	...	2	1	1
Hapistina	4	...	...	...	...
Cauhdiska	5	...	...	...	...
Hugautudwin	5	1	...	1	...
Hapaunau	2	...	...	...	...
Siiyatukawin	2	...	...	...	...
Heyaka	12	3	1	1	1
Pejihunta	7	1	...	1	...
Ninahnihdiwin	13	1	...	...	...
Zitkadauzawin	2	1	...	...	...
Tukanokiyewin	7	...	...	...	...
Hazawin	3	1	...	1	...
Hapau	5	1	2	1	1
Mahpiya	8	...	...	...	...
Hapestin	6	...	...	...	...
Nahpiyawicusta	3	...	...	...	...
Wenona	4	...	...	...	...
Waudisunwastawin	7	...	...	...	...
Tatekinunhiyayewin	5	1	...	1	...
Tasinatowin	7	...	...	...	...
Wakaukoyakewin	3	...	...	...	...
Hapun	5	...	...	...	...
Ogo	6	...	2	1	1
Hoksidan	6	1	...	1	...
Mazaynhayankewin	8	1	...	...	...
Munowakunhdewin	5	1	...	...	...
Mazanoupawin	3	...	...	...	...
Total	193	20	13	13	7

EAGLE HEAD BAND.					
Huijapa	7	...	2	1	1
Mahpeyahdakinyamuns	7	...	...	...	...
Chehdupasaampsun	2	1	2	2	1
Kahdawin	10	1	...	...	...
Iyaheyahewin	4	...	1	1	1
Touaka	7	...	...	...	...
Hapaupaye	2	2	...	...	...
Haza	11	...	...	...	...
Cauwiyawa	7	...	...	...	...
Cauhdeyayewin	2	...	...	...	...
Tawospin	3	...	...	...	...
Tasmamayawin	2	...	2	...	...
Anpitawastewin	8	1	...	1	...
Paksiksau	6	1	2	1	1
Tamaza	7	...	2	1	1
Wakauhditanunwin	2	2	...	...	...
Oyiwastewin	3	...	1	1	1
Wicauhpukoyakewin	4	1	...	...	...
Tatehonunwin	4	...	2	1	1
Tapita	1	...	...	...	...
Wiyuhamani	10	...	2	1	1
Total	109	9	16	10	8
RED LEG'S BAND.					
Husasa	5	1	2	2	1
Pepe	4	1	...	1	...
Hopi	5	2	...	...	...
Iyotaukewin	7	...	2	1	1
Wakaunaw	7	...	...	...	...
Hepau	6	...	...	...	...
Iyehyawin	6	1	...	...	...
Haza	5	1	...	...	...
Payahiyaewin	5	1	...	1	...

Mazaiyotawkewin	3	...	2	1	1
Winona	3	...	...	...	...
Ptesanwin	7	1	...	...	...
Caundeshamaza	5	...	...	...	...
Hazadutawin	4	...	...	...	...
Naypeya	7	...	...	...	...
Suman	3	1	...	...	...
Hopau	4	...	...	...	...
Aupctuhiyawin	7	...	...	...	...
Wakamauewin	2	1	...	...	...
Mazaahdiyahdum	4	1	...	...	...
Wakauhdiotawin	6	1	...	...	...
Wageininmapewin	2	1	...	...	...
Intekiyewin	2	...	...	...	...
Zitka	2	...	2	1	1
Mahpiuicasnawin	3	...	...	...	...
Tukanahawpewin	4	...	2	1	1
Wakinyanokiyiban	8	...	...	...	...
Wospie	2	3	2	1	1
Tukanyahpewin	5	2	...	...	...
Total	133	18	12	9	6
WAKUTE BAND.					
Wakute	9	3	3	2	2
Tonwauota	7	1	2	2	1
Wakawapewin	4	...	...	...	...
Wiuyaunau	6	...	...	...	...
Hapau	3	1	2	1	1
Owaca	6	...	...	...	...
Na-gi	3	2	...	...	...
Tatecinwin	4	...	...	...	...
Susu	2	...	2	1	1
Waci	5	...	...	...	...
Mahpiyadzahan	7	...	...	...	...
Upauhdeyuwin	4	1	...	...	...

Kaiyowazewin	5	1	...	...	...
Tasinatowin	8	1	...	...	...
Wauhdaka	7	...	2	1	1
Oicayewin	6	1	...	...	...
Waktehuihdewin	9	...	...	1	...
Wmyaunau	7	3	2	2	1
Wpaunau	13	...	...	...	...
Zitkadaansakoyakin	9	2	...	...	...
Mahpiyatankewin	9	1	...	1	...
Aupehdewin	10	...	...	...	...
Tiakunwindewin	11	...	...	...	...
Cauku	9	1	...	1	...
Wakauhdisnau	7	1	2	1	1
Winona	5	1	...	...	...
Cusuawin	7	1	...	...	...
Tunagedutawin	4	...	...	...	...
Kaupiskapewin	7	...	...	...	...
Kampeskadau	10	...	...	...	...
Wakauhdiyotaukewin	7	2	...	...	...
Takunheca	6	...	...	...	...
Itewakeuhdewin	5	...	...	...	...
Total	221	24	15	13	8
BLACK DOG'S BAND.					
Napesni	5	1	2	2	1
Mazaiojinejanwin	2	...	...	...	...
Aupetuiyotaukwin	2	...	...	...	...
Ptanhiyewin	1	...	...	...	...
Tokuhewin	3	...	...	...	...
Hotow	5	1	...	...	...
Winona	3	...	...	...	...
Kamdecamwin	1	1	...	...	...
Mahpiyazuwin	2	...	...	...	...
Saleyopahdwin	4	...	...	...	...
Hapan	4	...	...	...	...

Sasinawakan	3	...	...	...	...
Wicauhpudutawin	4	...	...	1	...
Ihawayakupin	4	1	...	1	...
Owankatowin	5	...	...	...	...
Aupu	1	...	2	1	1
Iciyahupewin	2	...	...	...	...
Cajeyatawin	5	...	2	1	1
Total	61	4	6	6	3
GOOD ROAD'S BAND.					
Wamanonsa	7	1	2	2	1
Tateavatomnau	9	...	...	...	...
Muhtiyadizinin	3	...	...	...	...
Tateyspawastewin	3	...	...	...	...
Ahdatewin	7	...	...	...	...
Ptandutawin	8	1	...	...	...
Makatokicawin	6	1	...	...	...
Hinhewin	4	...	...	...	...
Cepaahdewin	4	...	...	...	...
Hohepetekicawin	5	...	...	...	...
Kampiska	5	...	...	...	...
Hotedan	4	...	2	1	1
Mmaskatewin	7	...	...	...	...
Winode	2	...	...	...	...
Itesuna	3	2	...	...	...
Mahpiyatowin	4	...	...	...	...
Hupecutankawin	6	...	2	1	1
Oyenakisnanin	3	...	1	...	...
Muza	3	1	...	1	...
William Adams	2	...	...	...	...
Yucauniwin	3	...	...	...	...
Total	98	6	7	5	3

TAOPI'S BAND.

Taopi	5	1	2	2	1
Istazano	7	1	...	2	...
Wicinyan	4	...	1	...	...
Wakanhdispa	9	...	...	...	...
Tukanwicasto	6	...	...	1	...
Wastuiaduw	7	1	...	...	...
Makkayewin	6	1	...	...	...
Hakewate	11	...	...	...	...
Weyotanhannan	5	...	...	...	...
Nonpaicago	7	1	...	1	...
Wastemnawin	5	1	...	...	...
Paza	5	2	...	...	...
Wahacaukumaza	8	1	2	2	1
Tatehpiyamam	5	2	...	1	...
Betsey	4	...	...	...	...
Wakinyantawa	8	1	...	1	...
Hunkamaza	5	...	...	...	...
Inkanwayakapi	4	1	2	1	1
Waukinkpe	7	1	...	1	...
Aupenecage	4	...	...	1	...
Sukantoiciye	6	1	...	...	...
Caske	7	...	...	...	...
Mahpiyahdinykin	7	...	...	...	...
Cacetansun	5	1	2	2	1
Dutawin	5	1	...	1	...
Caaohiyayidan	9	...	1	1	1
Winyan	2	...	2	1	1
Kanyisapa	9	...	1	1	1
Mahpiyawakinze	4	1	2	1	1
Nagitopawin	6	...	...	...	...
Hotowhdinape	7	1	...	1	...
Maza	2	1	...	...	...
Susunkemaza	11	...	...	1	...

Wakinyantopa	2	...	1	...	...
Nakadutawin	3	...	...	...	...
Pescaduta	7	...	2	1	1
Total	214	20	18	23	8
YELLOW MEDICINE'S BAND.					
Anawauymana	8	3	2	2	1
Wakonboide	4	...	...	...	...
Fasina	3	1	...	...	...
Wihuke	4	2	2	2	1
Muhpigedan	3	...	...	...	...
Celahgedan	7	2	...	1	...
Winyantoicigewin	1	2	...	...	...
Apahatkawin	3	...	...	...	...
Tukaw	1	...	...	...	...
Nahpiyanayiwin	4	...	...	...	...
Canisotawin	5	...	...	...	...
Wasusnawin	11	1	...	...	...
Kusana	3	...	...	...	...
Yihya	1	...	...	...	...
Sihapakiye	7	...	...	...	...
Waske	2	...	...	...	...
Nayakutemani	5	2	2	3	1
Okihpesin	9	1	...	...	...
Tukan	5	...	...	...	...
Wakanoisedan	3	...	...	...	...
Kaskawin	4	1	...	...	...
Tukanhdviyotukewin	4	...	...	...	...
Dowanmani	6	...	...	...	...
Neteopi	7	2	2	1	1
Hapanan	4	...	...	...	...
Mazaska	5	...	...	...	...
Wcauhpinopa	4	...	...	...	...
Wicacaka	2	...	...	...	...
Inihan	5	...	2	1	1

Kawauke	5	1	3	1	1
Wakanmani	3	2	2	1	1
Upau	6	...	...	...	...
Wakaukadan	4	...	...	...	...
Mahpiwinna	10	2	...	2	...
Satedau	6	...	1	...	...
Peta	7	...	1	1	1
Wkaknhdikoyakiwin	8	1	1	1	...
Muinapewin	4	...	...	...	...
Sizowin	7	...	2	1	1
Oyatenazawin	4	...	...	...	...
Makinapewin	2	...	...	...	...
Supehiya	7	1	2	1	1
Tahaza	5	...	2	1	1
Mahpiyatanini	6	1	...	1	...
Webinukawaste	5	...	...	...	...
Wacaga	5	...	...	...	...
Tonwawetiton	6	1	...	1	...
Totedutewin	8	1	...	...	...
Wiyuha	12	2	...	1	...
Ecetukiya	4	...	...	1	...
Wkakmnapiwin	4	2	...	1	...
Wicauhpiwasecin	4	...	...	...	...
Mahpiyakoyakewin	4	1	...	1	...
Auputusa	12	...	4	1	1
Hapaunan	5	1	2	1	1
Sokecawin	1	1	...	...	...
Mazayonahnwin	3	1	...	...	...
Sucauwasecaunau	6	1	...	...	...
Hapesten	2	...	...	...	...
Total	295	36	29	27	12
HALF-BREEDS.					
John Moore	5	2	2	2	...
Angus M. Robertson	1	...	...	...	...

Gustavus A. Robertson ...	1	...	...	...	...
Thomas A. Robertson ...	2	...	...	...	...
Jane Moore.....	1	...	...	...	...
Joseph E. LaFramboise ..	4	1	2	1	...
Louise Moore.....	3	...	...	...	...
Louise Frenier	2	...	2	1	...
Narcisse Frenier	3	1	2	2	...
Alexis E. LaFramboise .	3	...	...	...	...
Thomas Robinson	2	...	...	...	...
Louison Frenier	8	1	2	2	...
Jack Frasier	1	...	...	...	...
Joseph Lablac	8	...	2	...	...
David Fairebault	1	...	...	...	...
Joseph Monterey.....	2	...	...	...	...
Mary Tussotts.....	1	...	...	...	...
A. D. Campbell.....	8	2	...	2	...
Scott Campbell.....	5	...	...	...	...
Antoine Renville	7	...	...	...	...
Michael Renville	6	1	...	2	...
Gabriel Renville.....	8	...	2	2	...
Charles Crawford	1	...	...	...	...
Frances Roy	8	2	2	1	...
Vetal Boye.....	3	...	...	...	...
Daniel Renville	4	1	...	...	...
Joseph Renville.....	2	...	...	...	...
Rosalie Renville	2	...	...	...	...
Maline Mumford.....	4	...	...	...	...
Alek Graham.....	6	...	...	...	...
Total	112	11	16	14	...
RECAPITULATION.					
Wabashaw's band	165	10	31	17	15
Passing Hail's band	193	20	13	13	7
Red Leg's band.....	133	18	12	9	6
Eagle Head's band	109	9	16	10	8

Wakute's band	221	24	15	13	8
Black Dog's band	61	4	6	6	3
Good Road's band	98	6	7	5	3
Taopi's (farmer) band ...	214	20	18	23	9
Yellow Medicine's band...	295	36	29	27	13
Total full Indians...	1,489	147	147	123	72
Total half-breeds ...	112	11	16	14	. . .
Total in camp.....	1,601	158	163	137	72

It is not intended that the foregoing list shows the real ownership of any property, but merely showing who holds it at present. The "inventory" of live stock cannot possibly be correct, as some two or three horses have died within the last two days. But it is as near correct as practicable.

WM. McKUSICK
Lieutenant, Superintendent of Indian Camp

No. 157

EIGHT MILES ABOVE MOUTH OF CROW CREEK,
On the Missouri river, May 28, 1963.

DEAR SIR: I have examined the river from Fort Randall, and have located here. I have the best place I have seen on the river – good land and timber for this country. I have just landed, and have been so busy receiving goods, &c., until now, and the boat is waiting on me to write this; therefore I cannot make an extended report, but will as soon as I can get my points to describe from. I shall probably from

Campbell creek, up 20 miles, for one set, and from Campbell's creek, down 20 miles, for the other set. I believe this is about the location the Secretary expected me to make; it is the best there is here anyway, so that I hope for your and his approval.

* * *

THE CONGRESSIONAL GLOBE.

January 26, 1863

* * *

[514] reduced to forty acres? It is not probable that the women and children exerted themselves to save the lives of white people, but it was done by chiefs, and heads of families, and young Indians who are styled braves or warriors. I think the provision is well enough as it is. I think we should reward Indians who, under the circumstances that surround this case, exerted themselves to protect the white inhabitants. This was the opinion of the committee – or of several members of the committee, I know – that they ought to be rewarded, ought to be distinguished from other Indians, as an inducement to Indians hereafter, when the tribes should conclude to engage in war with the white people, to frustrate the designs and plans of the tribe, to give timely notice to the settlers. I am not sure, however, but that the word "themselves," in the fifth line of the section ought to be stricken out, and the word "himself" inserted. I submit this to the chairman of the committee.

Mr. DOOLITTLE. I think that would be proper.

Mr. HARLAN. It would then be confined to the men who have thus exerted themselves.

Mr. DOOLITTLE. I have received from the Commissioner of Indian Affairs a statement made by

the head men and braves of some of these Indian tribes, which, with the accompanying certificates, I will read to the Senate:

OFFICE SUPERINTENDANT OF INDIAN AFFAIRS,
ST. PAUL, *December* 24, 1862

SIR: I herewith transmit petition of the Sioux Indians and letter of Agent Galbraith, giving a fair statement of facts as they occurred in my presence.

The Indians whose names appear to this petition have been true and loyal, and should not be punished for the sins of others. They are now without homes or means of earning a living. Their expectations, based upon the risk and danger they incurred in saving the whites in the late outbreak, have not been realized. They supposed the whites would be grateful and provide for them, and ask that their interests may be considered, and that they may not be driven off with the wild or savage Indians, who would treat them as badly as they have treated the whites. They are of the farmer Indians, and could do much towards raising their own living, if allowed to go back to their farms and be protected in their peaceable possession of them, and this should be done in time to allow them to get in their crops in season next spring.

The manner in which they have acted towards the whites ought to entitle them to a reward over and above their benefits arising from their treaty stipulations. They manifest

a desire to do anything or go anywhere the Department may direct.

Very respectfully, your obedient servant,

CLARK W. THOMPSON,
Superintendent Indian Affairs.

Hon. William P. Dole,
Commissioner Indian Affairs,
Washington, D. C.

SIOUX AGENCY, *December* 19, 1862.

SIR: In regard to the petition of Sioux chiefs and soldiers now under the protection of the military at Fort Snelling, which is herewith submitted, I have to say, what you know, that it is a voluntary matter on their part, and sets forth in their way their wishes and desires.

The situation of these men is a peculiar one. Not only are they generally *innocent*, but most of them have by their acts exhibited a friendship for the whites, and a moral and Christian fortitude, provocative of sincere admiration. They cannot go with the *wild* Indians again by any means, and such is the hatred towards their race engendered by recent atrocities, that our white citizens cannot be persuaded to allow them to stay among them. Thus their situation is a hard one, one which it is hard for persons not directly cognizant of the facts to realize. Six or seven of them, indeed, have made such a reputation

as to insure for them the respect of every white man and woman who *know* them. But then all do not know them, and to those who do not know them they are but "Ingins," and are subjected to all kinds of indignities, even to threats to take their lives. These thus well known, but not sufficiently to protect them, are *Aer-pater-to-kec-ha*, (Other Day;) *Maza-ku-ta-marie*, (Paul;) *Lorenzo Laurence*, or *Towar-ta-to*; *Ana-wab-ma-ni*, (Simon;) *Wusoo-ho-wash-tay*, and *Ka-war-kee*. Beside these, *Taopi*, *Wabasha*, *Chaska*, (who saved Spencer,) *Pay-pay*, *Red Iron*, *"Ohe Jims Son,"* *A-kipa*, *Wa-ke-au-washle*, *Chetan Shure*, (known as the Baby,) and perhaps ten others who were good in their way and entitled to particular mention, are comparatively but little known. They feel keenly and realize their situation, and their feelings have induced the petition, and when the petition was read to them they agreed to it, and authorized Colonel Crooks, yourself, and myself to add what we pleased to it. By this authority I do, then, add this: "These men are the representatives of the Sioux of the Mississippi. They have made no forfeit, but are entitled to rewards. They place themselves on the mercy of the Government and ask protection and whatever treaty rights they retain by this petition, they submit to the *discretion of the Secretary of the Interior*."

I submit the petition with remarks such as I have made and ask that you will, with such explanatory remarks as you see proper,

refer it to the serious consideration of the Department.

Respectfully, your obedient servant,

THOS. J. GALBRAITH,
United States Agent.

CLARK W. THOMPSON, Esq.
Superintendant Indian Affairs, St. Paul

We, chiefs and head men of the Mindewakantons and Wahpetons and Sissetons, Sioux of the Mississippi, make this book (petition) to our great Grandfather, the President of the United States:

Last August our young men all broke out and butchered a great many white men and women and children. The cause that they did this was that many of us had commenced to live as white men, and they were jealous of us; and on that account they went to war. We who make this book felt bad for this, and opposed it; but we were few, and they were many, and we could not prevent them. We did all we could. We did not go to war. We killed nobody. We helped to save the captives, and we succeeded in saving nearly three hundred white women and children, and Other Day saved our agent's family and all the whites at the Yellow Medicine, sixty-two in all. Paul, or Mazakutamarie, and Lorenzo, and Anawabmani, or Simon, also saved many white women and children.

We did no harm, and tried to do good. We know our young men, and many of our

old men, have broken the treaty, and we all feel bad. We are farmers, and want that our great Father would allow us to farm again whenever he pleases, only we never want to go away with the wild blanket Indians again; for what we have done for the whites they would kill us. We of the Upper Sioux would like to go to live on the Couteau des Prairie, fifteen miles west of Big Stone lake, in Dakota Territory; and we of the Lower Sioux would like to go back on our farms, and there live as white men, or we would like to live among the white men, and farm as they do, if they would let us.

We think we ought to be dealt with as our great Father does with his white children: the bad ought to be punished, and the good to be well treated. All the Indians who were engaged in killing the white men and women and children should be hanged; but we who did not do bad hope to live and we ask our great Father to let us live and to aid us. We think we have not forfeited out annuities or other funds, because we have done no wrong; and we ask that out great Father will use so much as belongs to us, in such way as to him seems best for our good, to help us to live, and as much as belongs to the bad Indians we would like to have our great Father pay our just debts out of; and it is in right that the white people who have lost all their

property should be paid out of the money which was the Sioux.

We humbly and respectfully ask that our great Father take pity on us and do as he thinks best for our good. We must have food and clothing, and in the spring somewhere to live. Last spring our agent brought us a great many plows and hoes and iron and other things, and we want that he should pay for these things out of our money. We want everything we owe paid.

We respectfully ask that our great Father appropriate our annuity money, and that of those whom we represent, first, to pay our debts created by our agent, Major Galbraith; second, to pay damages; and last, to aid us in getting a living. We are here at Fort Snelling, forty-one Lower Sioux Indians, and twenty Upper Sioux Indians, and about fifteen hundred women and children, and twenty half-breed men. We know not what to do, and we submit ourselves into the hands of our great Father.

WABASH-A, Chief,
CONGEPRY-ON-HA,
WAK-AUB-DE-OTA,
OKIS-AMUZA,
WA-KUTE, Chief,
WAK-AWH-DESNA,
HU-SHA-SHA, Chief,
PAY-PAY,
BU-YA-PA,
Chief acting for Shak-apee's band,
MAR-HE-YA-HOLCKEN-YOU-MANE,
Chief, acting for Shak-apee's band,
SHOTE-AN, Chief, acting for the
Shak-apee's band,
TA-OPI, Chief of Farmer Indians,
WA-KEN-Y-AN-WAX-TO,
WAKING-ANTUEVA,
AN-PE-DE-CURE,
CE-TAN-X-UN,
TON-K-AN-WE-CUX-TE,
MARPEY-A-WUKOUZE,
KAN-KE-SA-PA,
WAU-HINKPE,
WAK-AUHDESUPA,
WA-HA-CUN-K-A MAZA,
TONK-AN-TO-I-CI-YE,
TON-K-AN-WAN-YA-K-APE,
HAKEWAXTE,
WASU-HE-YA-YE-NA, Chief,
TATE-ROT-A,
WAM-ANU-S-A,
TA-TOO-TA-MA-IN,
WE-YU-HA-MANI,
WAK-ANMANE, Chief,
AHNAWABMANE, Chief,

Their X marks.

CITANH-DERA,
INNEH-AN, Chief,
XUPENEYON,
NITE-OPE,
MA-ZA-KU-TI-MA-RI, or PAUL,
AN-PE-TU-TOCE-CA,
or OTHER DAY, Chief

Witness:
THOMAS J. GALBRAITH, *Sioux Agent.*
JOHN P. WILLIAMSON.

HEADQUARTERS SIXTH REG'T MINNESOTA VOLS.,
FORT SNELLING, *December* 18, 1862.

I certify that I am personally acquainted with the Indians who have signed the foregoing petition. As president of the military commission that tried the Sioux prisoners, I had occasion often to meet these men. I consider them true hearted. They are, indeed, but few; but nevertheless they deserve all that the Government may grant them. They should be kindly dealt with and liberally rewarded. I certify to the signatories attached to this petition.

WILLIAM CROOKS,
Colonel Sixth Regiment Minnesota Volunteers.

I hereby certify that the Indians whose signatures are attached to the above petition, applied to Superintendant Thompson and Agent Galbraith for leave to make a book or petition to the President of the United States

through me. That said superintendant and agent met said Indians in council on the 17th instant, and that the Indians then and there dictated to me the foregoing petition; that it is a fair and just translation of what they stated, made by me; that after I had written it out in the English as above, I read it to them twice in their own language in presence of Rev. John P. Williamson, a Dakota missionary, and of the agent, superintendant, Colonel Crooks, and other persons, civil and military, at the headquarters of Colonel Crooks, at Fort Snelling; that said Indians all understood it, and publicly assented thereto in my presence, and authorized me to sign their names thereto, except Other Day (An pe-tu-toce-ca) and Paul (Ma-za-ku-ti-ma-ri,) who wrote their own names. I further certify that Wa-ba-sha, Wa-ku-te, Ta-o-pi, Wasu-he-ya-ye-na, Hu-sha-sha, and Ru-ya-pa, are chiefs, and represent the Lower Sioux, and that Other Day, Wa kan-mor-ni, An-a-wat-ma-ni and I-ni-ha-in are chiefs, and represent the Lower Sissetons and Wahepetons, and the others are all full-blood Indians of both Upper and Lower Sioux, who were throughout friendly to the whites.

ANTOINE FRENIERE,
United States Interpreter.

December 18, 1862.

I desire to say one word, as I am on this point, about breaking out of this Indian war, to show that, in my opinion, our Government has entered upon a

policy in reference to the Indian tribes, which is utterly wrong. Down to 1851 whatever annuities or presents we made to the Indian tribes we made to the chiefs, and then the chiefs made the distribution; and so long as the chiefs held the money, and the blankets, and the ammunition, and the rifles, the young men would look up to the chiefs; but after 1851, we entered upon the policy that the Government agents should distribute all our annuities among the individual Indians, and what was the necessary result? An individual Indian would look down upon his chief and say, "I am just as good as you are; I deal with the great Father himself, through his agent; I get my money, my blankets, my rifles, my ammunition, direct from the Government; you have no control over me." The result of it has been the breaking down of the tribal authority of the chiefs in those nations and the breaking down of their form of government among themselves, so that the chiefs no longer restrain the young men, and they go into war. Since 1851, more depredations have been committed by the Indian tribes than through the whole history of the Government before.

In my opinion, it has grown as much out of that as out of any other one fact, that the Government itself has broken down their tribal organization by making this distribution among the individuals. Here are, among the chiefs and the old men of the tribes, many that endeavored to restrain the young men from going to war in Minnesota. I think it will be good policy for us to offer to give to these persons one

hundred and sixty acres of land each, and to pay fifty dollars a head to them so long as they live, for rescuing the people of Minnesota and saving their wives and their daughters from massacre, or, what is a thousand times worse than death itself, from being ravished by these brutal monsters, as many of them were during that savage warfare. It is doing no more than we ought to do; and I think that the section, as proposed by the committee, ought to stand, giving to the individual Indian the one hundred and sixty acres and a pension of fifty dollars a year for his life.

Mr. FESSENDEN. I shall move to strike out the part that relates to pensions. That is introducing an entire new system. Whatever is given, I hope will be given in the shape of land.

Mr. RICE. The President, in his recent message to Congress, called the attention of Congress particularly to the subject of remodeling the Indian laws, and I have been waiting very patiently for the Committee on Indian Affairs to introduce a bill for that purpose. A vital change is absolutely necessary. So long as we in out treatment of the Indians violate a positive injunction of Holy Writ, or induce them to violate it, they will continue to die out. I believe the good book says that man shall earn his living by the sweat of his brow. Every inducement possible is held out to the Indians by this Government not to work. If you were to take citizens from the eastern States, and put together one or two hundred of them, or one or two thousand, on the plains, and treat them as treat the Indians, in five years they would become savages

themselves. There is no inducement held out to the Indian to labor. He lives

* * *

Ed-Stats.
A H
Delinquent
census, 1919

DEPARTMENT OF
THE INTERIOR

UNITED STATES
INDIAN SERVICE

Indian Training School,
Pipestone, Minnesota,
November 12, 1919.

The Commissioner of Indian Affairs,

Washington, D. C.

My dear Sir:

I have the honor to acknowledge receipt of Office letter dated November 6th, calling upon me to furnish a census of the Indians under my jurisdiction on or before November 20th. I regret that I am unable to comply with the Office's request, for the following reason:

These Indians are scattered about over the southern half of Minnesota, living in groups in Scott, Goodhue, Wabasha, Dakota, Ramsey, Redwood and Yellow Medicine counties, mostly. None of these communities is nearer than seventy-five miles from Pipestone and some of them are more than 200 miles away. It is utterly impracticable for me to canvass this territory for the purpose of making a yearly census and I have been unable to get the information necessary to do so from the local authorities. The Indians themselves will not report births and deaths to me and I have found that the local authorities are not anxious to do so. Perhaps, by sufficient urging,

correspondence and perhaps a substantial fee now and then I could get this information, but I have not time for this either.

The only thing that I can possibly do with the information at hand is to copy the census submitted in 1918, which in itself is merely a copy of former censuses and is incorrect. I am very much disinclined to perpetuate this farce as it can serve no good purpose and is labor lost that is much needed for other purposes at this time. I suggest, therefore, that the matter be held in abeyance until the general census is made in 1920, from which the data necessary may be obtained and compiled. Inasmuch as the law to which the Office refers applies apparently to superintendents in charge of reservations I am of the opinion that it would not apply to this jurisdiction, as this is not a reservation, and as practically all the Indians of it are citizen Indians. I should be glad to have this ruled upon. I await further instructions in the matter.

Very respectfully,

/s/ F. T. Merrit
Superintendent.

FTM.

AFFIDAVIT OF PUBLICATION.

STATE OF MINNESOTA,)
) ss
COUNTY OF RAMSEY)

~~F. DRISCOLL~~ [W.F. Driscoll] *being duly sworn, deposes and says that the annexed printed copy of notice of* Notice to Scouts *was taken from* THE DAILY [and Sunday] PIONEER PRESS, *a newspaper which, during the whole time of publication of said notice hereinafter stated, has been and is printed and published in the City of Saint Paul, County of Ramsey, and State of Minnesota. That the said notice was published in said newspaper for the period of* 15 *successive* [times] ~~*weeks, on _____ of each week,*~~ *commencing on the* 17th *day of* July *1891 upon which day last mentioned it was first published, and ending on the* 31st *day of* July *1891 upon which day last mentioned it was last published, upon which days or times of publication aforesaid the said newspaper was regularly published, and that during the whole time of the said publication he was one of the printers and publishers of the said newspaper.*

/s/ [Illegible]

Subscribed and sworn to before me, this 27th *day of* [Illegible].

NOTICE TO SCOUTS, SOLDIERS AND THEIR DESCENDANTS.

UNITED STATES INDIAN SERVICE.

NOTICE to the members of the Sisseton, Wahpeton, Medawakanton and Wapakoota bands of Sioux Indians who were enrolled and entered into the military service of the United States and served in suppressing the Sioux outbreak of 1862; or who were enrolled and served in the armies of the United States in the War of the Rebellion, and to the members of the families of such of said scouts and soldiers who have died, and who are not parties to the late agreement with the Sisseton and Wahpeton Sioux.

The undersigned will be at the chamber of commerce in St. Paul, Minn. on the 29th day of July; and in Niobra, Neb., on the 11th day of August; and in Devils Lake, North Dakota, 4th day of August 1891, on which dates all the members of the above-named bands, for the families or descendants of such as have died, who are entitled to enrollment, to share in the funds provided by act of congress approved March 8, 1891, and who have not already been enrolled by me are called upon to present themselves or their claims, to me at any of the places named accompanied by proofs of their right to enrollment.

SAMUEL H. ELROD
Special Agent,
Clark, S. D.

Mdewakanton Treaty – treatment of scouts

That for the purpose of paying to the scouts and soldiers of the Sisseton, Wahpeton, Medawakanton, and Wapakoota bands of Sioux Indians who were enrolled and entered into the military service of the United States, and served in suppressing what is known as the Sioux outbreak of eighteen hundred and sixty-two, or who were enrolled and served in the armies of the United States in the war of the rebellion, and are now living, and to the descendants and members of the families of such of said scouts and soldiers as are now dead, who were not parties to the agreement entered into between the United States and the Sisseton and Wahpeton bands of Dakota and Sioux Indians on the twelfth day of December, eighteen hundred and eighty-nine, for the reason that they were not residents of the said Sisseton Reservation and did reside elsewhere, their pro rata shares of the amount found due said scouts and soldiers for annuities under the provisions of the fourth article of the treaty of July twenty-third, eighteen hundred and fifty-one, and of which they have been wrongfully and unjustly deprived by the operation of the provision of the act of Congress approved February sixteenth, eighteen hundred and sixty-three, and entitled "An act for the relief of persons for damages sustained by reason of depredations and injuries by certain bands of Sioux Indians," the whole amount so found due all of said scouts and soldiers by the Department of the Interior, having been appropriated by the United States, to the

Indians residing on the Sisseton Reservation, in and by article three of the said agreement of December twelfth, eighteen hundred and eighty-nine, to the Indians residing on the said Sisseton Reservation, without reference to military service, and the said scouts and soldiers residing off said reservation being thereby deprived of their pro rata share of said annuities for which Congress made provision to the thirtieth day of June, eighteen hundred and ninety, in and by section twenty-seven of the act of March third, eighteen hundred and ninety-one, leaving their share of the annuity of eighteen thousand four hundred dollars due the first day of July, eighteen hundred and ninety, and the first day of July, eighteen hundred and ninety-one, and the first day of July, eighteen hundred and ninety-two, the first day of July, eighteen hundred and ninety-three, and the first day of July, eighteen hundred and ninety-four, wholly unpaid and unprovided for, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, thirty thousand six hundred and sixty-six dollars and sixty-six cents, or so much thereof as may be necessary, to be paid in equal shares and per capita to said scouts and soldiers who are still living, and who are not parties to the agreement aforesaid, and – a share that any such scout or soldier would receive if living shall, in the event he is dead, be divided pro rata between his wife and children and descendants, and the payrolls upon which payments were made to said scouts and soldiers their descendants under the twenty-seventh section of the act March third, eighteen hundred and

ninety one, shall be conclusive in all cases where the name appears upon said rolls, except in cases where deaths have subsequently occurred, and the Secretary of the Interior is hereby authorized to add such other names to said rolls as were previously omitted therefrom by mistakes or omissions of persons who were lawfully entitled to be enrolled thereon

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United States Indian Service,
Birch and Cooley *Agency,*
Morton Minnesota
January 15th, *1896*

To the Honorable Commissioner
of Indian Affairs
Washington, D.C.

Sir

I have the honor to serve herewith late census of the full and mix blood Mdewakanton Sioux of Minnesota taken by me during the months of July 1895 and January 1896.

The total number of mix bloods as mentioned in this census is 520 you will notice that from Page 1 to 10 inclusive parts of 241 Sioux while Page 110 [illegible] starts with 250 [illegible] leaving the actual count to be 512 instead of 520.

I am very Respectfully
your obedient Servant
Robert Henton

United States Indian Service,
Birch and Cooley *Agency,*
Morton Minnesota
July 24, *1896*

To the Honorable Commissioner
of Indian Affairs
Washington, D.C.

Sir

I have full and mix blood Mdewakanton Sioux Indians of Minnesota taken and [illegible] by me the 30th of June, 1896 the number of males above 18 years of age to be 170. The number of females over [illegible] of age to be 268. [Illegible] school children between the ages of 6 & 16 to be 182. [Illegible] with [illegible] out of 21 [illegible] of $60.00 per months. We believe [illegible] the state and [illegible] large bridge they have the advantage of our Public Schools. This Roll has a good many names of individuals that have never participated in any of the distributions that I have made. They being applicants for enrollment since the appropriations have been expended.

INDIAN LAND CERTIFICATE.

No. 64

To all whom it may concern: 411 38

It is hereby certified that John Cermak, *a member of the Mdewakanton band of Sioux Indians residing in Minnesota, has been assigned the following-described tract of land, viz:*

Part of NE1/4 of NE1/4 of Sec. 33, T.115N., R.22W., beginning at the NE corner of said section, thence west 1320 feet, thence South 825 feet, thence east 1320 feet, thence north 825 feet to the place of beginning *in* Scott *County, Minnesota, containing* 25 *acres, more or less.*

It is also certified that the said John Cermak *and* his *heirs are entitled to immediate possession of the said land, which is to be held in trust, by the Secretary of the Interior, for the exclusive use and benefit of the said Indian, so long as said allottee or his or her heirs occupy and use said land. If said land should be abandoned for* two *years by the allottee, then said land shall be subject to assignment by the Secretary of the Interior to some other Indian who was a resident of Minnesota May 20, 1886, or a legal descendant of such resident Indian.*

It is also declared that this certificate is not transferable, and that any sale, lease, transfer or incumbrance of the said land, or any part thereof to any person or persons whomsoever, except it be to the

United States, and as herein provided, is and will continue to be utterly void and of no effect. It is further declared that said land is exempt from levy, taxation, sale, or forfeiture, until otherwise provided by Congress.

In testimony whereof, *I,* William Zimmerman, Jr. *Commissioner of Indian Affairs, have hereunto set my hand and caused the seal of this office to be hereto attached at the City of Washington, D. C., this* 11th *day of* May, *19*[44].

(Sgd) William Zimmerman, Jr.
asst. Commissioner of Indian Affairs

IN THE UNITED STATES COURT
OF FEDERAL CLAIMS

Sheldon Peters Wolfchild, et al.

Plaintiffs,

vs.

Court File No.:
03-2684L

United States,

Defendant,

and

Jesse Cermak, et al.;
Raymond Cermak, Sr., et al.;
and Michael Stephens, et al.,

Intervenors.

INTERVENORS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO INTERVENE

INTRODUCTION

The proposed Intervenors respectfully submit their Memorandum of Law in Support of their Motion to Intervene. Those Intervenors listed in the Jesse Cermak, Raymond Cermak and Michael Stephens Complaints in Intervention ("Intervenors") are all entitled to intervene in this matter as a matter of right. Plaintiffs' attempt to deny the Intervenors participation in this matter is not based on the previous decisions of this Court or the historical record, but rather on their own interpretation of these decisions and based on their own self-appointed

expert. Given the standard this Court is to employ in determining this Motion, the Intervenors should be allowed to serve and file their Complaints in Intervention.

STATEMENT OF FACT

Prior to reciting the facts entitling the Intervenors to become parties to this matter, it is important to briefly set forth the earlier findings of this Court. This is important due to plaintiffs' contention a lineal descendant must be someone who descends from a name found on the 1886 census, including the 1889 supplement. Pls. Response to Mot. to Intervene at p. 1 (hereinafter "Pls. Response"). Not only is this a distortion of the record, it also distorts the very underpinnings plaintiffs earlier argued to support their causes of action.

Previously the Court set forth a detailed recitation of the history of the 1862 Sioux uprising, and the resulting acts of Congress dealing with the "loyal Mdewakanton." *See Wolfchild v. United States*, 62 Fed. Cl. 521, 526-529 (2004). With respect to the acts of Congress, there are three, of which the last is of primary importance for this Motion. First was the 1888 Act which by its terms related to "the full-blood Indians in Minnesota. . . ." *Id.* at p. 527 n.4 (citation omitted). Second was the 1889 Act which also dealt with full-blood Indians. *Id.* at n.5. The third act, the 1890 Act, "expressly stated that the further

appropriated amount was to support Indians of both 'full and mixed blood.'" *Id.* at p. 527.

Eligibility for those entitled to the benefits set forth in the 1888 Act was based on the census conducted by Walter McLeod, and mailed to the Commissioner of Indian Affairs on September 2, 1886. *Id.* at p. 528. A second census was taken by Robert B. Henton dated January 2, 1889. *Id.* The Court noted in *Wolfchild I* "[t]he McLeod and Henton listings (together, the '1886 census') were used to determine who would receive the benefits of the amounts appropriated under the 1888, 1889, and 1890 Acts." *Id.*

Yet, as a matter of chronology and based on the substance of the Acts, the "1886 census" is not determinative of who was or was not a loyal Mdewakanton. First, the 1890 Act is dated August 19, 1890, after both the McLeod and Henton census. Second, naturally the McLeod and Henton census would not include mixed-blood Indians due to the fact the 1888 and 1889 Act each referenced full-blood Indians. Thus, those individuals who are listed on the McLeod and Henton censuses cannot be an exhaustive list of loyal Mdewakanton. Otherwise, the 1890 Act is of no import, which is clearly not the case.

In *Wolfchild II* the Court recognized the recitation set forth above. "The 1886 census as supplemented by the 1889 census supplies a *presumptive* starting point for identifying the loyal Mdewakanton and their descendants, but these

census rolls may not be definitive. . . . Regarding eligibility and the census rolls, the government has stated its understanding that neither [the 1886 nor the 1889] roll includes the mixed-bloods who were included in the 1890 Act." *Wolfchild v. United States*, 68 Fed. Cl. 779, 787 n.10 (2005) (emphasis supplied). The question, therefore, is not who is mentioned on the 1886 census, but who was left off the 1886 census and the supplement by virtue of the individual being of mixed-blood rather than a full-blood Indian.[1]

The three proposed Complaints in Intervention all have a common ancestor. They also all refer to John Cermak, who held Indian Land Certificates 64 and 65.[2] Land Certificates were given to those

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[1] Plaintiffs are apparently of the belief mixed-blood loyal Mdewakanton are not part of the beneficiary class. They state the 1886 and 1889 census is definitive of those entitled to be a member of the beneficiary class of the three Acts. Pls. Response at p. 2, n.1. Yet, as mentioned above those two censuses do not name mixed-blood members. Plaintiffs obviously have a vested interest in precluding those who are entitled to the benefits of the 1890 Act becoming a party to this litigation. They admit as such by stating "Plaintiffs' counsel and Dr. Barbara Buttes are ascertaining lineal descendants of the original beneficiary class. . . ." *Id.* Original beneficiary class as defined by whom? The plaintiffs? Intervenors are unaware of any Order of the Court appointing Dr. Buttes the final arbiter of who is a member of the beneficiary class. As the historical recitation indicates, the members of the beneficiary class include the descendants of both the full and mixed blood Mdewakanton – which include the Intervenors.

[2] Plaintiffs make reference to the fact John Cermak is not listed on the 1886 Census and therefore is not a lineal descendant. Pls. Response at p. 2. True, John Cermak is not

(Continued on following page)

beneficiaries entitled to an assignment of a portion of the 1886 lands. *Wolfchild I*, 62 Fed. Cl. at 528-529. However, the Land Certificates are only one part of the history with respect to John Cermak, his mother Margaret (Maggie) Cermak and his grandmother Angeline Morand.

Robert Henton did not cease his work with the 1889 supplemental census. After the passage of the 1890 Act, Henton submitted an additional census to the commissioner of Indian Affairs dated January 15, 1896. Att. 2. In his transmittal letter, Henton indicates he is transmitting the census of full and mix blood Mdewakanton. *Id.* For the mixed-blood Mdewakanton, Henton references Angeline Morand at entry 123 and Maggie Churmack (sic) at line 305. *Id.* Angeline is listed as a widow, her husband Amos having died on May 7, 1892. Att. 3. He had lived in Minnesota continuously since 1835.[3] *Id.* Margaret Morand, who later became Margaret (Maggie) Cermak, is listed on the 1865 LeSueur County Minnesota census. Att. 4.

Henton's duties, including the censuses referenced above, included purchasing various items on

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listed on the 1886 Census, the reason being John Cermak was born on February 20, 1896. Att. 1. Julia Cermak, the grandmother of Michael Stephens, was John Cermak's sister. *Id.*

[3] Angeline's death certificate indicates she had resided in Minnesota continuously for 77 years. Att. 1. Thus, the requirement the ancestor be a resident of Minnesota on May 20, 1886 is satisfied. *See Wolfchild I*, 62 Fed. Cl. at 527.

behalf of the Mdewakanton, including land. *Wolfchild I*, 62 Fed. Cl. at 528 n.7. Henton passed away prior to completing his work. In his stead, James McLaughlin was given the authority by the Department of the Interior to make an additional census. Att. 5. In a letter dated February 20, 1899 McLaughlin was instructed to make a "complete census of the Medawakanton (sic) band of Sioux Indians in Minnesota. . . ." Att. 6. Part of his task was to ensure any Indians who were improperly enrolled as members be prevented from receiving additional payments. *Id.*

McLaughlin completed his task in March of 1899. Att. 7. He certified his census by stating: "I certify that the foregoing is a correct census to the best of my knowledge and belief, of the Medawakanton (sic) band of Sioux Indians of Minnesota, numbering 907 persons, including the Mixed-bloods of said band, now residing in Minnesota." *Id.* Maggie Churmack (sic) is the 860th listed person. Her maiden name is noted as Morand. *Id.* John Cermak was the 867th person listed. *Id.*

While not diminishing the importance of the 1886 census and its supplement, the McLaughlin census is actually a more accurate representation of all individuals who were covered by the three Acts at issue. Merely by way of example, John and Mary Crooks are individuals 12 and 13 of the McLaughlin census. *Id.* John and Mary Crooks are the 48th family listed in the 1886 census. John Moose and his wife Harriet are the 240 and 241st individuals listed on

the McLaughlin census. They are the 5th family listed on the 1889 census. Whereas the 1886 and 1889 census only listed those full-blood Indians, the McLaughlin census listed both full-blood and mixed-blood Indians, as required by all three Acts.

The Court referenced an earlier Court of Claims matter involving the tribal lands at issue. *Wolfchild I*, 62 Fed. Cl. at 526 n.2, citing *Sisseton and Wahpeton Bands v. United States*, 42 Ct.Cl. 416 (1907). On January 17, 1924 a roll of those Mdewakanton entitled to share in the judgment was transmitted to the Secretary of the Interior. Att. 8. the transmittal letter states the individuals listed "did not personally take part in the outbreak of 1862. . . ." *Id.* The 389th individual listed is John Cermak, son of Margaret Cermak. *Id.* On March 27, 1995 John Cermak received a letter from the Bureau of Indian Affairs. Att. 9. The letter references the Court of Claims judgment. Mr. Cermak's "right to share the judgment funds was not based upon a blood quantum but through descendancy (direct issue of an ancestor, namely, child, grandchild, great-grandchild, etc.)." *Id.*

Despite the above, plaintiffs state John Cermak "could not identify a parent or grandparent on the 1886 Census – i.e., he was not a lineal descendant." Pls. Response at p. 4. Unfortunately, intervenors counsel was not provided a copy of the attachment purporting to support this fact. However, as indicated above having a parent or grandparent on the 1886 Census is not dispositive of whether someone is a beneficiary of the three Acts. Quite the contrary.

Plaintiffs' claim is not being raised here for the first time. On February 4, 1958 Superintendent W.W. Palmer wrote to Arthur Goodthunder, then Chairman of the Lower Sioux Tribal Council. Att. 10. At a meeting on January 29, 1958 John Cermak's enrollment was questioned. *Id.* As Mr. Palmer states, John Cermak appears on the 1928 Census Roll. It was also noted that in 1944 the Council was informed "John Cermak is a Mdewakanton Sioux and has been carried on our roll for a number of years." *Id.*

To further obfuscate the issue, plaintiffs claim the awarding of the Land Certificate to John Cermak "was in violation of decades of Department of the Interior practice – as confirmed in the government's own documents." Pls. Response at p. 3. First, as demonstrated above, John Cermak was a lineal descendant of an individual entitled to the benefits of the three Acts. As such, he was entitled to the Land Certificates. Second, the documents cited by plaintiffs to support their contention in fact detracts from the contention. Most telling is plaintiffs' Attachment 8.

Attachment 8 is a Memorandum from the Acting Associate Solicitor for Indian Affairs to the Field Solicitor in the Twin Cities. In discussing eligibility, it notes the 1888 and 1889 Acts apply to full-blood Mdewakantons whereas the 1890 Act applies to both full-blood and mixed-blood. Pls. Att. 8 at Bates No. 0041000 n.1. The Memorandum then references the McLaughlin census of 1917. *Id.* at Bates No. 0041001; *see* Intervenors Att. 8. In discussing the 1886, 1889 and 1917 censuses, it was "conclude[d] that there is

no legal impediment to using both the McLeod and Henton rolls by themselves as well as the McLaughlin roll for supportive evidence, to verify ancestry at the Shakopee Indian Community. This is not to preclude the possibility of using other rolls or materials if their contents sufficiently prove that the named individual is a descendant of an 1886 Mdewakanton resident of Minnesota." Pls. Att. 8 at Bates No. 0041001.

Lastly, plaintiffs contend, without authority, that Intervenors have "submitted no evidence of lineal descent – birth certificates or infant baptismal records. . . ." Pls. Response at p. 2. Intervenors at this stage are doing just that – attempting to intervene. At this point in the proceedings the allegations contained in their Complaints are deemed valid. *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1291 (D.C. Cir. 1980). Second, this Court did not require evidence of lineal descent be provided with the Motion to Intervene. True, the Court did say "you should have documentation showing that you are a lineal descendant. Birth certificates or other birth records (such as hospital records, baptismal certificates, or family Bibles) should be provided for each generation, tracing your ancestry back to an individual who was an eligible beneficiary under the trust." *Wolfchild II*, 68 Fed. Cl. at 803. However, there was no requirement the birth certificates be provided

with, the motion to intervene.[4] Yet, so there is no further dispute as to the lineage of the Intervenors in this matter, Attachment 1 contains the birth certificates tracing lineage from the great great grandchildren of Angeline Moran, back to Ms. Moran. The remaining Intervenors are all descendants of these individuals, and if need be, Intervenors would be more than willing to submit their birth certificates as well.

ARGUMENT

The sole question before the Court is whether the Intervenors can intervene in this matter pursuant to RCFC 24(a). As an initial matter, the court is to construe the requirements for intervention in favor of intervention. *Am. Mar. Transp. Inc. v. United States*, 870 F.2d 1559, 1561 (Fed. Cir. 1989). The Rule requires a showing of two factors. First, the applicant must claim an interest in the property or transaction which is the subject of the lawsuit. Second, "the applicant is so situated that the disposition of the

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[4] It is presumed plaintiffs did not file birth certificates corresponding to all of the new named plaintiffs in their last Amended Complaint. Instead, they merely recite the allegations previously made as to entitlement to be considered an eligible beneficiary. Plaintiffs do not explain, or provide authority, for the proposition those new plaintiffs have a lesser burden to be included in this matter than do the proposed Intervenors. They cannot because there is no such authority.

action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties" RCFC 24(a).

As noted above, Intervenors have an interest in the property which is the subject of this matter. They are direct lineal descendants of individuals covered by the Acts, as well as descendants of those who were listed on census rolls and were granted a Land Certificate. Plaintiffs' claims to the contrary are based on a narrow interpretation of not only who is covered by the Acts, but by the Court's previous rulings.

If Intervenors were not allowed to intervene the resolution of this action will impair their ability to protect their interests. As this Court noted, "[i]f you choose not to participate as a plaintiff in this lawsuit, any future claim brought by you may be barred by your delay. Furthermore, the court's findings of fact and conclusions of law in this case may be binding on any later claim brought by you." *Wolfchild II*, 68 Fed. Cl. at 802. Plaintiffs' objection to the request to intervene demonstrates the Intervenors' interests are not represented at all by existing parties.

CONCLUSION

For the reasons stated herein, Intervenors respectfully request the Court grant their Motion to Intervene allowing them to serve and file their Complaints in Intervention.

Respectfully submitted,

PIERCE LAW FIRM, P.A.

Dated:
May 25 , 2006

By /s/ Jack E. Pierce
Jack E. Pierce
6040 Earle Brown Drive,
Suite 420
Minneapolis, MN 55430
(763) 566-7200

Attorney for Intervenors

SANTEE SIOUX ROLL
ACT OF MARCH 4 1917 AND
COURT OF CLAIMS JUDGMENT
PREPARED BY
TURIN B BOONE AND IRENE W BASFORD
FIELD INVESTIGATION JAMES McLAUGHLIN
1923

OFFICE OF INDIAN AFFAIRS,
Washington.

JAN 17 1924

The Honorable

The Secretary of the Interior.

Sir:

There is transmitted herewith a roll of Medawakanton and Wakpakoote Bands of Sioux Indians, otherwise known as Santee Sioux, entitled to share in the judgment of the Court of Claims under the jurisdictional act of March 4, 1917 (59 Stat. L., 1195), the relevant portion of which reads as follows:

Upon the rendition of such judgment and in conformity therewith the Secretary of the Interior is hereby directed to ascertain and determine which of said Indians now living took part in said outbreak and to prepare a roll of the persons entitled to share in said judgment by placing thereon the names of all living members of said bands residing in the United States at the time of the passage of this Act, excluding therefrom only the names of those found to have personally participated in the outbreak; and he is directed to distribute the proceeds of such

judgment, x x x x x x x except as hereinafter provided, per capita, to the persons borne on the said roll.

In conformity with the Act, the Court of Claims rendered judgment in favor of said Indians in the sum of $386,597.89, for which Congress made an appropriation by the Act of January 22, 1923 (42 Stat. L., 1163). The Court of Claims fixed the attorneys' fees at 10 per cent of the amount of the judgment, or $38,659.78, leaving $347,938.11 for distribution among the Indians entitled thereto.

A similar payment was made to the Sisseton and Wahpeton Bands under the Act of June 21, 1906 (54 Stat. L., 326), with which the present Act is identical except as to names, dates, etc. The roll for the Sisseton-Wahpeton payment was prepared by Major James McLaughlin, departmental inspector, in view of which, and owing to his familiarity with the location and family history of the Indians Major McLaughlin was also detailed to make up the roll for this payment. After a field investigation of several months Major McLaughlin returned to Washington the latter part of July, 1923, for the preparation of the roll; but unfortunately died a few days later.

The completed roll herewith submitted was therefore prepared in this office on the basis of the records left by Major McLaughlin, verified and supplemented by an exhaustive search of the Santee Sioux annuity and census rolls and other pertinent records here. The roll contains the names of 2,691 persons, all of whom were members of said bands

residing in the United States on March 4, 1917, who did not personally take part in the outbreak of 1852; and it is believed complies strictly with the terms of the Act. The amount ($347,938.11) is distributed as follows: 819 shares at $129.29 each, and 1,872 shares at $129.30 each, aggregating $347,938.11.

It is therefore recommended that the roll be approved; that authority be granted for the payment to the enrollees, per capita, as indicated, in the sum specified above; and that the disbursing clerk of the Department of the Interior be directed to draw checks accordingly.

Respectfully,

/s/ [Illegible]
Commissioner.

Department of the Interior,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, Nov. 29, 1898.

Mr. James McLaughlin,
U. S. Indian Inspector,
Merchants Hotel, St. Paul, Minn.

Sir:

Referring to your detail to make a census of the Medawakanton Sioux Indians, and former correspondence on the subject, you are hereby advised that authority has been granted by the Department for you to employ a clerk to assist you with the work referred to, for such time as may be necessary, at a compensation of $3.00 per day and actual and necessary traveling expenses. Please report the services of the clerk employed under this authority on form 5-252 for approval.

Very respectfully,

/s/ A.G. Tonner
Asst. Commissioner.

GRC

Department of the Interior,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, Feb. 20, 1899.

James McLaughlin, Esq.,
U.S. Indian Inspector,
Present.

Sir:

Under date of November 22nd last, and in pursuance of instructions from the Department relating thereto, the work of making a complete census of the Medawakanton band of Sioux Indians in Minnesota, was placed in your hands in order that the names of all Indians if any, heretofore improperly enrolled as members of said band, might be eliminated from said rolls, and thereby prevented from receiving any further payments. This work having been undertaken by you, was not completed, owing to the fact that you were called away temporarily upon other duties, but I am advised that you will soon return to Minnesota to complete your labors relating to said census.

For the purpose of having certain work in connection with the purchase of land by Mr. Henton for the Medawakanton band of Sioux completed, on or before the completion of the census roll by you, instructions were addressed to Mr. Henton on the 23rd ultimo, to prepare a full and complete schedule of all lands purchased by him for said band of Indians and forward same to this office. Since the date of this letter, this office has been advised of the decease of Mr. Henton.

With the view therefore of having the work, as outlined in office letter above named to Mr. Henton, completed, (copy herewith) you are requested if not incompatible with your other duties, but in connection therewith, to furnish this office with a complete schedule of all lands, purchased by the late Mr. Henton for the said Medawakanton band of Sioux Indians, giving in detail as far as possible the following information viz., 1st date of purchase, 2nd vendor or grantor, 3rd area, 4th cost, 5th subdivision, 6th location, giving section, township, range and county, 7th names of individual Indians to whom said lands have been assigned by late Agent Henton, and also metes and bounds of such assignment where practicable, 8th, value of each piece or parcel of land so assigned. Also any other information relating to these lands that you may deem useful to the office.

For your information I herewith enclose a copy of a letter addressed to Rev. W.H. Knowlton of Redwood Falls, Minnesota, on the 24th ultimo, which gives in substance a statement, – as taken from the records of this office, – of all the appropriations that have been made for this band (Medawakanton Sioux) of Indians, from 1884 up to present time. It also furnishes the names of the different Special Agents that have been appointed from time to time to carry out the instructions of the government relating to these Indians.

There is also enclosed herewith for your information, and also as a guide in making up the foregoing schedule six (6) different plats of land purchased by Mr. Henton for said band of Indians

and forwarded by him October 24 last to this office. After these have served your purpose you will please return them for the files of the office.

In a letter from Mr. Harry Henton (a son of the late Specail Agent) of Morton, Minn., dated 27th ultimo; he states that all the papers &c. of his father have been carefully preserved. It is probable that you may find it necessary, in making up the above named schedule to have recourse to said papers, for which purpose a letter has this day been addressed to said Harry Henton, advising him of this additional work being placed in your hands, and requesting that he will afford you access to such official papers relating to the lands purchased by his father, as shall be found necessary by you.

As you are doubtless aware, the title to all the land purchased by late Agent Henton for said Indians, is still vested in the United States – being held in trust for them – and that in all probability steps will be taken at an early day looking to the allotment of said lands by the Department to such Indians as the late Agent has designated and are entitled thereto, and for this reason particularly as well also as for purposes of verification, this schedule is deemed necessary and important.

Very respectfully,

/s/ A.G. Tonner
Acting Commissioner

C.H.D.

L.

App. 65

Census
-of-
Medawakanton Sioux
-of-
Minnesota

James McLaughlin
U.S. Indian Inspector

March 15th 1899

Approved by Department March 29, 1899
for 14542 March 30, 1899

Census Roll of Medawakanton Sioux of Minnesota, March 15th 1899

ANNUITY PAYROLL

No.		Name		Age	Bal.	Per Capita	Amount Paid	[Illegible]	[Illegible]		Approx. Value	Remarks
[Illegible]	[Illegible]						Blood	Post Office Address				
		Amount Brought Forward										
1	1	Isabelle Neston	✓	69	F		F.B.	Morton, Minn.		26 $^{84}/_{100}$	$530.00	
2	2	Sarah Leith	✓	33	F		F.B.	Morton, Minn.		24 $^{12}/_{100}$	$480.00	
3	3	Walter " " Son	✓	9	M		F.B.					
4	4	James " "	✓	8	M		F.B.					
5	5	Emma " " Daug.	✓	4	F		F.B.					
	6	Ida " "	✓	1	F		F.B.					
												Ida, Daug. Born Feb. of 98
6	7	Nancy Smith	✓	54	F		F.B.	Morton, Minn.		27	$640.00	
7	8	Louise Chaska	✓	45	F		F.B.	Morton, Minn.		20	$400.00	
8	9	Gideon " " Son	✓	50	M		F.B.					
9	10	Winona " Daug.	✓	8	F		F.B.					
12	11	Esther Hart	✓	16	F ✓		F.B.	Morton, Minn.	7	25	$800.00	
13	12	John Crooke	✓	73	M		F.B.	Morton, Minn.	13	20 $^{14}/_{100}$	$1043.00	
14	13	Mary " " Wife	✓	40	F		F.B.	Morton, Minn.				
15	14	Joseph Ironshield	✓	62	M		F.B.	Morton, Minn.		23	$575.00	
16	15	Solan Taopi	✓	40	M		F.B.	Morton, Minn.		28 $^{75}/_{100}$	$718.00	
17	16	Lucy " " Wife	✓	35	F		F.B.					
18	17	Fanny Ross	✓	50	F		F.B.	Morton, Minn.		25	$500.00	
19	18	Samuel Wells	✓	42	M		F.B.	Morton, Minn.		27	$540.00	
20	19	Lucy " " Wife	✓	38	F		F.B.					
22	20	Moses " " Son	✓	13	M		F.B.					
24	21	Mary " " Daug.	✓	10	F		F.B.					
23	22	Amos " " Son	✓	5	M		F.B.					
25	23	Maggie " " Daug.	✓	3	F		F.B.					
21	24	Terry " " Son	✓	2.1	M		F.B.					
26	25	William Columbus	✓	83	M		F.B.	Morton, Minn.		23	$460.00	
27	26	Jane " " Wife	✓	61	F		F.B.					

28	27	Moses Columbus	✓	27	M		F.B.	Morton, Minn.		29 75/100	$595.00	
29	28	Lucy " " Wife	✓	22	F		F.B.					
30	29	Gracie " " Daug.	✓	4	F		F.B.					
31	30	Alice " "	✓	2	F		F.B.					
35	31	Mary Wabasha	✓	70	F		F.B.	Morton, Minn.		23	$460.00	

CONGRESSIONAL GLOBE 1878

* * *

and make suggestions, which work it is to be presumed has been accomplished long ago.

Mr. NELSON. Then there is no permanent appropriation existing for the office of superintendent of Indian schools. There is not such office, technically.

Mr. BLOUNT. That may be very true, but my point is this: You have this provision in this bill; you have a purpose to subserve; practically you are using this officer for other purposes than as an inspector. Therefore why not allow the correction to be made here and designate him as superintendent instead of as inspector?

Mr. PERKINS. If there be no objection, it may be possible for the chairman of the committee to offer as an amendment, in the line of the suggestion of the gentleman from Georgia, the bill which we have reported from the committee creating the office of superintendent. That bill enlarges his powers and duties somewhat.

Mr. BLOUNT. I want to know of my friend if he does not desire to use the person provided for in this bill for the work of superintending the schools.

Mr. PERKINS. Yes, I understand that that is what he is for.

Mr. BLOUNT. Then why not allow him to be so designated?

Mr. PERKINS. I see no objection to it.

Mr. BLOUNT. I submit that no one on reading the bill would suppose that this man had anything to do with the control of the Indian schools. The inspector has limited duties, and in this case they are especially limited, and I do not see how you can charge this person with the additional duties unless you give him the proper designation.

Mr. RYAN. As a mere inspector he is not necessary.

Mr. BLOUNT. Not at all.

Mr. PEEL. If the House desires not to do anything in a permanent way about this matter we might, by consent, take this course. The Senate has passed a bill creating the office of Indian school superintendent. It is a well-draughted bill. It was referred to the Committee on Indian Affairs and was reported to the House by that committee unanimously and is now on the Calendar. It creates the office of Indian school superintendent, and I will say to the House that it is a bill in which the President and the Secretary of the Interior take a great interest, so that if the House desires to create that office and establish it as a permanent matter this is a very good time to do it.

Mr. BLOUNT. Are you not using this person now for this very purpose?

Mr. PEEL. We have styled him in this bill exactly what the law styles him, and the only change

we have made from the phraseology of the last bill is in defining his duties, that he should visit each school once in two years. The remainder of the provision is precisely as it was. Now, why we should call him superintendent, when there is no such office known to the law, I do not see.

Mr. RYAN. I suppose this officer is doing that very duty.

Mr. PEEL. Certainly; he is doing what the law requires him to do.

Mr. BLOUNT. What law does the gentleman refer to?

Mr. PEEL. The law which was read awhile ago.

Mr. BLOUNT. It did not refer to him at all.

Mr. PEEL. It referred to an inspector.

Mr. BLOUNT. It referred to an inspector with certain specified duties; not to this official at all.

Mr. NELSON. Will the gentleman agree that the bill which has passed the Senate, and which we have reported favorably here, may be incorporated in this bill?

Mr. BLOUNT. If it was left to me I would have no objections. I have not offered any amendment; I have simply made a suggestion.

Mr. ROGERS. Mr. Chairman, I suggest to the gentleman in charge of the bill that he ask consent to pass from this section, with the privilege of returning to it, and that hereafter he return and offer as an amendment the Senate bill, which prescribes this officer's duties, gives him a proper name, and gives him a proper salary.

Mr. PEEL. I think the suggestion is a good one, and I will accept it.

Mr. BLOUNT. I hope my friend will allow an inquiry before we pass from this section. I find here a provision that his officer is to be allowed $3 per day for traveling expenses, exclusive of cost of transportation and sleeping-car fare. I wish to know whether the gentleman does not think that $3 per day is ample for traveling expenses of all sorts?

Mr. PEEL. We have followed the last appropriation bill.

Mr. BLOUNT. The gentleman says they have followed the last appropriation bill, but I ask him whether he does not think $3 per day sufficient for traveling expenses?

Mr. PEEL. In some localities it may be and in others it may not.

Mr. NELSON. It would not pay his railroad fare.

Mr. RYAN. The Departments which employ traveling agents usually make the allowance contained in the bill.

Mr. BLOUNT. I think my friend is mistaken.

Mr. PEEL. Let me say to the gentleman [Mr. BLOUNT] that I was in error when I said that this was the allowance heretofore made. It was $4 a day, and the committee cut it down to $3.

The request of Mr. PEEL, that this paragraph should be passed over temporarily, was agreed to.

The Clerk read as follows:

> For subsistence and civilization of two thousand Yankton Sioux, heretofore provided for in appropriations under "Fulfilling treaty with Sioux of different tribes," $25,000; in all $60,000.

Mr. MACDONALD. I have an amendment to offer which has been approved unanimously by the Committee on Indian Affairs, but was not incorporated in the bill because the correspondence with the Department on this subject did not reach the committee in time. I ask the amendment be read.

The Clerk read as follows:

> Insert after the paragraph just read the following:
>
> "For the support of the full-blood Indians in Minnesota, belonging to the Medwakanton

band of Sioux Indians, who have resided in said State since the 20th day of May, A. D. 1886, and severed their tribal relations, $30,000, to be expended by the Secretary of the Interior in the purchase, in such manner as in his judgment he may deem best, of agricultural implements, cattle, horses, and lands, and in making improvements thereon: *Provided, That* of this amount the Secretary, if he desires it for the best interest of said Indians, may cause to be erected for the use of said Indians at the most suitable location, a school-house at a cost not exceeding $2,000: *And Provided also,* That he may appoint a suitable person to make the above-mentioned expenditures under his direction, the expense of the same to be paid out of this appropriation."

Mr. MACDONALD. Mr. Chairman, I think it is proper I should submit a few words in explanation of this amendment. It has been prepared by the Indian Department, and is submitted by me, because I represent the district of country directly interested; and I might say that nearly all of these Indians are located in the district which I represent.

In the month of August, 1862, our State was the scene of one of the most bloody and destructive Indian wars recorded in the history of our country. Almost the entire tribe of Sioux Indians, then resident within the borders of our State, rose up in arms and made war upon our settlers without a moment's warning along the entire frontier of our State upon

which they could operate, a distance of nearly 200 miles, without a day of a moment's warning to our frontier settlers. I will not attempt to describe the scenes of horror that followed the general onslaught. I must leave that to be imagined. Only those who were there can form any idea of the awful scenes and tragedies that were enacted. It has been well said that the fiends of hell could not invent more fearful atrocities than were perpetrated by the savages upon their victims; that the bullet, the tomahawk, and the scalping-knife spared neither age nor sex, and that but few prisoners were taken except the young women, and a few children. Of the young women, it is needless to say that they would have been fortunate to have met instant death rather than to have had to endure the agonies and tortures to which they were subjected.

In the short space of thirty-six hours from the beginning of the outbreak nearly one thousand whites were cruelly slain, and for nights that entire frontier was lit up by the flames of burning dwellings, barns, stacks of grain and hay, and other property to which these ruthless savages applied the torch. The character of this war and the confidence with which these Indians made the onslaught may be judged from the fact that they attacked in force Fort Ridgely, one of our strongest military posts, and also, in broad daylight, assailed the town of New Ulm.

Our State was then comparatively weak in population and had sent one-half of its fighting men to the Union armies in the South, and the Indians had come

to the conclusion that in consequence of this fact they could recover possession of our State by putting to death or driving out of it all our people. We talk of the horrors of war and its scenes of blood and carnage, but nothing that was ever enacted in civilized warfare can be compared to the horrible and atrocious conduct of these bloodthirsty savages.

Now, when I tell you that all the Sioux Indians did not prove fiends in human form, but that on the contrary a few of them remained friendly to the whites and became their trusted allies and defenders, and that a number of them did valuable service in protecting our people and their property, and in saving many lives, you can understand how grateful we must feel to those true and tried Indians who did us such valuable service. They have ever since had claims upon not only our gratitude but that of the nation at large, which ought long ago to have recognized and partially, at least, compensated for their invaluable services.

But I am sorry to say, sir, that this has not been the case, and that the story of the treatment of these friendly Indians is, in a measure, but history repeating itself. At the time this outbreak occurred these Indians were what we term treaty Indians, located upon the Sioux Indian reservation, in our State, and were entitled to annuities in money and goods and provisions, and had an annual allowance for educational purposes, together with a sum for agricultural and general civilization purposes. By the act of Congress, entitled "An act for the relief of

persons for damages sustained by reason of depredations by certain lands of Sioux Indians," approved February 16, 1863, all treaties with the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands were declared to be abrogated and annulled, and all the lands, annuities, and claims previously accorded to said Indians were declared to be forfeited to the United States; said forfeiture being made, as stated in said act, in consequence of the war waged by said bands against the white settlers of Minnesota. I am almost ashamed to say it, but the fact is that no exception was made, even in favor of these friendly Indians.

The Indians who are to be the beneficiaries of this appropriation are, as my amendment indicates, members of the Medewakanton band. After this outbreak was suppressed by force of arms and the most guilty punished with the aid of these Indians, in whose behalf I am appealing, they were placed by the Government upon a reservation set apart for them, but these were unable to remain there. Some, in fact, never went upon that reservation, deeming it unsafe for them to do so. By aiding and defending our white settlers they had incurred the hatred and relentless hostility of the "hostiles," and their lives were not safe while they were together. The result has been that these friendly Indians have nearly all long ago severed their tribal relations and taken up their residence among the whites, nearly all of them being located in the district I have the honor to represent.

I should have said that the amount and value of the land and the annuities of this band of Indians, which was so confiscated and covered into the United States Treasury, was about $1,000,000. It will, therefore, be seen that if these Indians secured their share of this money they would receive annually more than this sum proposed by me and be able to support themselves. Naturally enough they do not feel that justice has been done to them; for they are fully aware of the facts just stated by me in relation to the confiscation and sale of their reservation and similar disposition of their annuities. In proof of this fact, I will have read a letter from "Good Thunder," of whom I will let Bishop Whipple – whom you all know – speak hereafter. Before coming here to attend this session, the leading men of these Indians came to see me, and among them "Good Thunder." He pleaded that justice be done his people in this matter, and I advised him, upon his return home, to call upon his missionary (for he is a Christian as well as a hero) or some other friend, and have him write me a letter to submit to the Department in support of an appeal for justice in behalf of his people. He has done so, and I submit it to the candid, thoughtful consideration of the House.

BIRCH COOLEY, REVILLE COUNTY, MINNESOTA,
February 20, 1888.

DEAR SIR: In the matter of the claim of the Medawakanton Sioux, residing in the State of Minnesota, to a pro rata share of the

fund arising from the sale of the Sioux Indian reservations in that State, under the authority of the act of Congress of 1863, we desire to make the following statement of fact, as it appears to us, for your information and advice.

If you shall consider that our claim is well grounded and that the facts and the law are favorable to our view of the matter, we respectfully ask you again to lay it before the honorable Commissioner of Indian Affairs, and, if he be not convinced hereby, to push the matter to an ultimate decision by appeal to the honorable Secretary of the Interior or otherwise, as you shall deem best for our interest.

We desire the matter finally and speedily settled, as it is a constant source of anxiety and bad feeling among our people, who feel that they are being shut out from their hereditary rights, and that their money is being paid out to others in excess of their just claims, and to some who have no right and claim to any benefit arising therefrom.

If the sum were a small one, or if we were in comfortable circumstances, we might remain silent or feel little interest. But the sum in bulk is a large one (nearly if not quite a million dollars), and our own pro rata share would be enough, if expended for land, to make us comfortable for life.

And our needy circumstances are not our fault or choice. We are the people who, when

our tribes revolted or were seduced into war against the United States, were friendly to the whites and fought for them and rescued many prisoners and served until the frontier was cleared of the enemy, us scouts and pickets on the whole western border of Minnesota. All of us, or our fathers, were in such service. On this account we were unable to go to the reservations set apart for various of our bands, or having attempted it, to remain on such reservations. The people, though of our own blood, were hostile to us, and destroyed the property and threatened the lives of such of us as attempted to make residence among them.

We think these things in themselves constitute an apparent and just ground for our claim to our share of the moneys arising from the sale of our own homes.

But beyond this, we think the law and the manner in which it has been administered lie in our favor, and on this ground we make our demand.

The law of 1863, confiscating our annuities and ordering the sale of our lands and homes for our benefit, says that the moneys arising from this sale shall be expended for the benefit of these "Indians in their new homes." If it had said new reservations it might have meant to limit its benefits to reservation Indians, and thus exclude such as did not return to tribal life and so all these friendly soldiers and scouts. But it is

not so worded; it says in their "new homes," not reservations.

Again, it has in one instance at least been interpreted by the Department in accordance with our views. The Indians living near Flandreau, Moody County, Dakota Territory, do not now live and never have lived there on a reservation.

They, like us, have renounced their tribal allegiance and become citizens, and have acquired title to their lands under the homestead laws of the United States as citizens, and yet they have been allowed to participate in the distribution of the moneys arising from the sale of the Minnesota reservation. Moreover, some of them having, as citizens, mortgaged their homesteads, they have been provided money to clear these mortgages by the Indian Office, and they are still applicants for further aid from this reservation fund. The Santees, living in Nebraska, are also living on homesteads, and are still citizens of the State, and yet have received large sums from this fund, and are still applying for further grants.

These facts not only appear, but we consider that the fund has been unjustly administered, not through fault of the law of 1863, but by the interpretation of it in the Indian Office. The parceling out of the fund is the administrative act of the Indian Office, and if error has been made may be corrected in that office.

The reservation in Minnesota was 120 miles long by 10 in width, on the south side of the Minnesota River. Of this land one-half, extending from Rock Creek to the Yellow Medicine River, belonged to the Medawakantonwan Sioux and to the Wahpekutes, both these tribes being now known as Santees, and the upper half of the reservation, extending from the Yellow Medicine River to the Dakota line, belonged to the Sisseton and Wahpeton Sioux. Yet in the distribution of the fund the latter have been allowed more than one-half of the moneys. Moreover, the Santee lands were better lands, and were first sold and brought better prices, and yet no advantage was allowed to accrue to them from these facts.

At Devil's Lake are settled a large number of [Illegible]-heads and other James River Dakota Territory Indians, who had no treaty with the Government, who never lived in Minnesota, and had no rights or interest in and to the Minnesota reservation, and yet they also have been enumerated together with the Sissetons residing there, and been allowed to participate in the benefits of this fund.

Further, the Minnesota Indians had an individual interest in their late reservation, and had under the treaty 80-acre tracts assigned to each family and houses and other improvements. The distribution of this fund should have been equitable as between individuals, every one receiving in some way,

his own proper part and share. It has not been so administered. Certain men and families have received benefits to the amount of hundreds of dollars and others have received nothing. If the record of the office is inspected, it will be seen that large gifts have been made to certain families, say Frazier, Ross, and Hake-waste, and to others nothing at all.

But this is of the past and under another administration of affairs. For the present we claim that the balance of the fund yet unexpended belongs fairly and of right to the Minnesota Sioux, whose new homes are here, and who have been the faithful allies and friends of the Government. We can not rightly be deprived of our interest in the fund arising from the sale of our old homes and farms. And if the Commissioner shall order a hearing or grant us this fund we want it expended only for lands and improvements.

Will you kindly present our cause as forcibly as you can and push it to a final decision. If you need further information or substantiation of our claim we are prepared to furnish it forthwith.

Respectfully,

GOOD-THUNDER, his x mark.

Hon. J. L. MACDONALD, M. C.,
Washington, D. C.

While this letter is couched in the language of an educated person, I know that it is but the substance

of what this Indian would say if he were here, and that he tells his story about as he tells it in the Dakota tongue. There is a sadness that is truly pathetic in this appeal of "Good Thunder" in behalf of his people as well as himself. It will be seen that this letter was not intended for Congress, but for the Indian Department, and is a dignified protest against the fact that their fidelity and loyalty to the whites have been ignored, and that no exception was made in their behalf when the confiscation of the land and annuities of their tribe was made, as was already stated.

I can submit no more eloquent appeal in behalf of these friendly Indians, of more influential testimony as to the character of "Good Thunder," than is to be found in the letter of their warm friend and advocate, Bishop H. B. Whipple:

FARIBAULT, MINN., *December* 9, 1887.

MY DEAR MR. MACDONALD: I write to ask your kind interest in behalf of the scattered Sioux of our State. You know these men are homeless largely on account of their devotion to us during the Sioux war. Their annuities were confiscated and they thrust out of home, while their friendship for us made them afraid to go to the mission. Congress has made appropriations for them twice – the first in money, which was of no use beyond their temporary support. The second was used in part to buy lands, etc., near Shakopee, Red Wing, and Wabasha,

where they secured poor land and had no one to guide them.

Good Thunder, the Christian hero, who was chief of scouts under Sibley, purchased land near their old home. He gave 30 acres for a mission-house, and I have built a mission house, with a room attached, large enough for worship. There are twenty-three families here, and all are industrious and doing well, although some who have only 5 or 10 acres of land ought to have more. The land is good, plenty of timber, and a few miles of grass-land can be had cheap. I believe that if Congress will appropriate $20,000 for the purchase of land, agricultural implements, and to build a school-house not to cost over $1,000, with furniture, books, etc., we remove all of these scattered Sioux and have a model Christian village.

The missionary I have paid myself from my deep love for men who showed much heroism in the war. Will you show this to Judge WILSON, RICE, and other members, and if you will secure this I shall give you all my life-long gratitude. You all know my devotion to this poor people. Many of the infirmities which have made me an old man before my time have been earned in their service. I do honestly believe that these friendly Sioux deserve, as do others, the kindness of the Government. Please all of you try to get this, and our Heavenly Father, who never forgets a deed of love to His poor children, will repay. With kind regards to my

friends, Mr. RICE and Judge WILSON, Mr. NELSON and Mr. LIND.

Your friend,

H. B. WHIPPLE,
Bishop of Minnesota.

In a letter dated January 13, 1878, General Sibley said in relation to this confiscation of the lands and annuities of these Indians:

> I have always regarded the sweeping act of confiscations referred to as grossly unjust to the many who remained faithful to the Government, and whose lives were threatened and their property destroyed as a result of that fidelity.
>
> Having been in command of the forces which suppressed the outbreak, and punished the participants in it, I became necessarily well informed as to the conduct of the bands and the individuals who took part for or against the Government during the progress of the war, and I have repeatedly, in my official dispatches, called the attention of the Government to the great injustice done the former class by including them in the legislation which deprived them of their annuities.
>
> Very respectfully yours,
>
> H. H. SIBLEY,
> [Illegible] *Major-General*
> *United States Volunteers.*

As evidence in support of the fact that this appropriation is recommended by the proper Department of the Government, I submit the following letters relating thereto:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., March 16, 1868.

SIR: I have the honor to inclose herewith copy of a letter from Hon. JOHN L. MACDONALD, member of Congress from Minnesota, together with copy of a letter from Bishop Whipple, in relation to a band of Medawakanton Sioux residing in Minnesota, and respectfully recommend that the inclosed [Illegible] of appropriation be transmitted to the chairman of the Committee on Indian Affairs of the House, and of the Committee on Appropriations in the Senate, with your favorable recommendation, to be added to the Indian appropriation bill now before the House committee.

Very respectfully,

J. D. C. ADKINS, *Commissioner,*
The SECRETARY OF THE INTERIOR.

[Indorsement.]

DEPARTMENT OF THE INTERIOR,
March 17, 1888.

> Respectfully forwarded to the honorable Secretary of the Treasury, for transmission to and for the favorable consideration of Congress.
>
> WM. F. VILAS, *Secretary.*

In obedience to similar appeals Congress last year appropriated $10,000, which was to be used in the purchase of lands and farming implements for these Indians, but because of a failure on the part of the person chosen to expend it to attend to the matter, nearly one-half of it was not used and remains in the Treasury. Consequently, a portion of them did not receive the lands intended to be thereby secured for them, and the Indians did not have the benefit of but little more than half of that appropriation. The object of this appropriation is to further aid these Indians in becoming self-sustaining and adopting the habits and customs of our civilization.

In explanation of the fact that the amendment is presented in this way, I wish to say, in justice to myself and all parties concerned, that I had an understanding with my friend, the chairman of the Committee on Indian Affairs, that I should be notified in time to call upon the Department for the correspondence on this subject, in order to submit it to the committee, but in the press of business the matter was overlooked and the bill reported without this provision.

Mr. BLOUNT. Is it not true that the Indians who were engaged in the hostilities referred to are under later treaties getting annuities now?

Mr. MACDONALD. That is the fact, although these friendly Indians are not receiving their annuities.

Mr. BLOUNT. So I understand; and that makes the case a stronger one for the gentleman's proposition.

Mr. MACDONALD. Yes; it makes it stronger.

Mr. RYAN. Are these Indians under the control of any agency?

Mr. MACDONALD. No, sir; they are nearly all of them located in my district. By an appropriation heretofore made land has been purchased for the majority of them –

Mr. BLOUNT. Are they engaged in agriculture?

Mr. MACDONALD. Yes, sir; and this money is designed to buy horses, cattle, seed, and implements to be used by them in their occupations, which we hope may be the means of their becoming fully civilized. I will state that the money forfeited, which belonged to the tribe of which these Indians were members, amounts to about $1,000,000.

Mr. BLOUNT. They get nothing under treaty.

Mr. MACDONALD. Not a dollar.

The amendment was agreed to.

The Clerk resumed and continued the reading of the bill until the appropriations on page 32, for "miscellaneous supports," had been reached.

Mr. PEEL. I ask now that we go back to consider the matter of the Sioux superintendent. A Senate bill on this subject has received favorable action at the hands of our committee; and I do not think there will be any objection to incorporating in this appropriation bill the measure which is to be offered as an amendment.

Mr. HOLMAN. I think there will be no objection if it be understood that there is to be no increase of the present salary. The duties will be substantially the same as at present – will require no more time for their performance.

The CHAIRMAN. Permission has been given to return to page 6 of the bill. The Clerk will read the amendment when it is sent up.

Mr. NELSON. I now send up to the desk the following amendments for the purpose of having them acted upon as a whole. The first amendment changes the phraseology of the bill as to the title of this inspector of Indian schools and prescribes his duties and compensation; and the latter part of the amendment is offered as a new section 8, and changes the number of the present section 8 to section 9.

I call attention to what I have corrected in the printed bill as the first amendment.

The CHAIRMAN. The latter amendment could not be entertained now.

Mr. NELSON. It is offered as a whole by an understanding already had, and I ask unanimous consent to offer the amendments as an entirety. Unless unanimous consent is given for that purpose I shall not offer them at all.

Mr. HOLMAN. Let the amendments be read, subject to the point of order.

The Clerk read as follows:

Amend line 126, page 6, of the bill to read

"Pay of one superintendent of Indian schools, $3,000.

Strike out the remainder of lines 127, 128, 129, and 130.

Amend lines 131 and 132 to read as follows:

"Traveling expenses of one superintendent of Indian schools, including incidental expenses of inspection and investigation, $1,500."

SEC. 8. That there shall be appointed by the President, by and with the advice and consent of the Senate, a person of knowledge and experience in the management, training,

and education of Indian children to be superintendent of Indian [Illegible] toward civilization and self-support and what changes are such defects as may exist.

It shall be the duty of said superintendent, subject to the [Illegible] Secretary of the Interior, to employ and discharge superintendent [Illegible] any other person connected with such schools, and to [Illegible] regulations for the conduct of the schools as in his judgment [Illegible] schools may require. He shall embody in detail his doings [Illegible] with the reasons for his action in each case, in annual re[Illegible].

The said superintendent shall be allowed and paid a salary [Illegible]num, and, in addition thereto, his actual and necessary trav[Illegible]curred while in the discharge of the duties prescribed by this [Illegible] to be allowed and paid on vouchers approved by the Secretary.

The Secretary of the Interior shall cause to be detailed fr[Illegible] his Department such assistants and shall furnish such [Illegible] necessary to carry out the provisions of this act.

Mr. HOLMAN. I still retain the point of order.

Mr. NELSON. I understood the point of order was [Illegible].

Mr. McMILLIN. These amendments were only [Illegible] formation of the committee.

Mr. BLOUNT. Not at all. The gentleman from [Illegible] unanimous consent some time ago to offer this amen[Illegible] gentleman from Indians [Mr. HOLMAN] said that he [Illegible] less the compensation of the superintendent was reduc[Illegible] if the gentleman modified it he would not object.

Mr. McMILLAN. But no further request for objec[Illegible] the Chair, and that action of the gentleman from In[Illegible] taken as an estoppel of the committee.

The CHAIRMAN. The right to object has not be[Illegible]

Mr. HOLMAN. I think that there is but one fu[Illegible] this –

Mr. BLOUNT. The gentleman from Minnesota [Illegible] these amendments in their proper place, and on objec[Illegible] the question was submitted to the committee. I im[Illegible] too late to raise the objection after the amendment [Illegible] as agreed upon by the committee.

Mr. NELSON. The salary has been fixed, as wi[Illegible] amendment, at $3,000.

Mr. HOLMAN. I wish to call the attention of [Illegible] fact: That on hastily looking at the amendment I [Illegible]tion, which was as to the $4,000 salary. I objected [Illegible] were precisely the

same as those of the predecessor [Illegible] the sum heretofore imposed ever since 1882 – that is, as to the [Illegible] per diem, and traveling expenses; and the approp[Illegible] made was fixed upon that basis; that is to say, that [Illegible] much per diem in addition to the traveling expenses [Illegible].

Now, I think that language ought to be retained i[Illegible]. In all other respects I am satisfied with it.

Mr. NELSON. I desire briefly to explain the amend[Illegible] we may agree upon the general plan of it, and then [Illegible] after it is before the committee. I simply ask that [Illegible] be considered by unanimous consent at this time, an[Illegible] termine if it will be necessary to modify or change [Illegible].

The CHAIRMAN. Is there objection to the req[Illegible] man from Minnesota?

Mr. McMILLAN. I prefer, Mr. Chairman, that m[Illegible] this upon its own merits as an independent propsition [Illegible].

Permit me to state that I favor such appropriation [Illegible] by treaty stipulations; but I doubt very seriously th[Illegible]ing beyond the treaty stipulations in this provision [Illegible].

Mr. RYAN. Perhaps my friend does not understand [Illegible] have already made provision in the bill for such a[Illegible] the pay at $3,000? Now this simply designates the [Illegible] name, and provides how he shall be appointed, and [Illegible]

ties. It seems to me that the legislation is very pr[Illegible] with this provision. If you are to have the officer [Illegible] have a law providing how he shall be appointed and [Illegible] salary shall be, as well as the duties.

Mr. McMILLAN. My friend and I differ only [Illegible] oppose the appointment by the Government of any [Illegible]tion with those schools except such as are required [Illegible]tion with the Indians.

Mr. BLOUNT. The duty of making those appoin[Illegible] of the treaty stipulations. Those funds belong to th[Illegible] used for their improvement, and among other things [Illegible]portant agency for the improvement of the Indians [Illegible].

Mr. NELSON. I desire to explain the reasons for [Illegible]. We have by law technically no authority for a superint[Illegible]. But by the law found in volume 22, Statutes at Large [Illegible]fice of inspector of schools was established; and th[Illegible]rant we have for an official of this kind.

Mr. McMILLAN. That is what I am complainin[Illegible]

* * *

[SEAL] **THE NATIONAL ARCHIVES**
OF THE UNITED STATES
1934
LITTERA SCRIPTA MANET

List of names of members of the Sisseton Wahpeton, Meda-Wakanton, and Wapakoosa Sioux Indians, who were enrolled and entered into the Military Service of the United States and served in suppressing the Sioux outbreak of 1862 and who served in the United States army in the war of the rebellion, and the members of the families and descendants of such of said scouts and soldiers who were not parties to the agreement ratified March 3, 1891 – 26 Stats. 1036.

This list was prepared by J.H. Elrod under instructions from the office of Indian Affairs, which can be found by references to the following noted office letters addressed to him June 6 & 19, July 4, 24, 26, August 4, 11, 13, 20, 21, 22, 24, 26, 28, 31, September 1, October 3 & 15, December 9 & 11, 1891.

Scouts or Soldiers

✓ 49 /s/ Scott Campbell

✓ 50 /s/ Robert Weston

✓ 51 /s/ Pay-Pay [Illegible]

✓ 52 /s/ [Illegible]

✓ 53 /s/ Benjamin Young

54 /s/ Joseph Young

55 /s/ Charles Mitchell

A ROLL OF SIOUX MIXED BLOODS, 1855-56

The ninth article of the treaty of July 15, 1830 at Prairie du Chien with the bands of the woodland Sioux had granted to the mixed bloods of the tribe a tract of land on the west side of Lake Pepin for their permanent settlement and use. However, because of changes in federal policy, the land was never made available for their settlement. After decades of dispute and delay the government, in order to open this tract for general settlement, authorized a special payment to those mixed bloods interested in the tract. In return for their relinquishment of their claims they were allowed scrip to be used for the purchase of other available federal land. On April 10, 1855 the Commissioner of Indian Affairs appointed Harvey H. Johnson and William H. Jones as special commissioners to visit the upper Mississippi valley, take testimony and compile a roll of those who would be qualified by blood to participate in the settlement. The commissioners gathered their information in the fall of 1855 and submitted their report the following February.

The list survives in two apparently contemporary copies among the records of the Bureau of Indian Affairs (RG 75) in the National Archives, Inventory #378. Both copies are in poor condition. The first copy was used as the basis for this transcription with text supplied from the second copy in places where the first was damaged.

Comparison of the information in this list with other material available on some of these families suggests that the commissioners made a serious effort to gather reasonably accurate information. While there are undoubtedly errors, the overall accuracy level seems quite high. It should be remembered though that the main concern of the commissioners was to identify those mixed bloods who were qualified by descent to share in the payment, not to compile a genealogical compendium of the mixed-blood community. There is, however, much genealogical information either stated or inferred, enough to make this roll a useful resource.

Each entry gives the name, age (presumably as of Fall, 1855), fraction of Woodland Sioux blood, the band from which the individual descended, the individual's residence and, for women and children, the name and relationship of the spouse, parent or guardian. It should be noted that the fraction of blood given is only that amount of descent from the bands interested in the treaty and settlement. If a person descended also from another tribe or band (as a fair number undoubtedly did) that degree of relationship is ignored in the calculation.

The supplement and appendix list a number of people who were apparently omitted when the commissioners were gathering their testimony. Others were undoubtedly missed for a variety of reasons, so this list should be considered absolutely complete. It does, however, list the great majority of mixed-blood Sioux in the upper Mississippi valley in the middle 1850's.

SIOUX HALF BLOODS OF MINNESOTA, JOHNSON'S AND JONES REPORT FILED FEB. 23, 1856

Register of the Names of Half Breeds or Mixed Bloods, now living, of the Medanwahkanton, Wahpacouta, Wahpeton and Sisseton Bands of Sioux Indians who Claim Interests in the half breed reservation on Lake Pepin under the 9th Article of the Treaty Concluded at Prairie du Chien of 15th July 1830 as Passed upon by U.S. Commissioners under their Appointment and Instructions of the 10th of April 1855.

	NAME	AGE	%	BAND	GUARDIAN	RES.
1.	Wm. M. Brisbois	16	1/8	Md	Bernard W. Brisbois, F	Wi-PdC
2.	Daniel "	14	1/8	Md	"	"
3.	Emily T. "	12	1/8	Md	"	"
4.	Henry "	10	1/8	Md	"	"
5.	Theophilus La Chapelle	38	1/4	Md	Bernard W. Brisbois, L.G.	"
6.	Pauline Beach	36	1/4	Md	W. of Solomon Beach	In-Vie
7.	Solomon "	2	1/8	Md	S. of "	"
8.	Ursule Ousiace	38	1/2	Md	W. of Charles Ousiace	Wi-PdC
9.	Elizabeth Conklin	6mo.	1/16	Md	D. of Edgar Conklin	Wi-GB
10.	Harriet T. Mitchell	23	1/8	Md	D. of William Mitchell	"
11.	Sophia P. "	22	1/8	Md	"	"
12.	Louisa "	18	1/8	Md	"	"
13.	Charles Pizanne	28	1/4	Md		Mi-Mac
14.	George "	22	1/4	Md		NY-NYC
15.	Louise Moreau	28	1/8	Md	W. of Amable Moreau	Wi-PdC
16.	Isadore "	11	1/16	Md	Amable Moreau, F.	"
17.	Orilie "	8	1/16	Md	"	"
18.	David "	4	1/16	Md	"	"
19.	Virginia "	2	1/16	Md	"	"
20.	Sophia "	1mo.	1/16	Md	"	"
21.	David Goutier	23	1/8	Md		"
22.	Caroline N. "	18	1/8	Md	David Gautier, H.	"
23.	Alexander S. Hooe	23	1/8	Md	Single	Ca-SF
24.	Emilie Hooe	42	1/4	Md	Widow of Lt. Hooe	Wi-PdC
25.	Josephine "	21	1/8	Md	Dr. "	"
26.	Emilie M. "	18	1/8	Md	" "	"
27.	Harriet V. "	15	1/8	Md	" "	"
			*	*	*	
339.	Tashina Langie*	—	1/2	Si	Francis Langie, H.	Mn-LQP
339 1/2	Francis " , Jr.	19	1/4	Si	" , F.	"
340.	John "	17	1/4	Si	" "	"
341.	Sophia "	15	1/4	Si	" "	"
342.	Joseph "	12	1/4	Si	" "	"
343.	Rosilla "	9	1/4	Si	" "	"
344.	Moses "	7	1/4	Si	" "	"
345.	Louis "	5	1/4	Si	" "	"
346.	Madeline "	2	1/4	Si	" "	"
	*Rejected (Full Blood)					
347.	Joseph Decouteau	5mo.	1/2	Md/Wn	Joseph Decouteau, F.	"
348.	Joseph Bird	5	1/2	Md/Wn	" , G. (Stepf.)	"

349. Michael Renville	30	¾	Md/Wn			Mn-YeM
350. Anna "	6	⅞	Md/Wn	Michael Renville, F.		"
351. Mary "	3	⅞	Md/Wn	"	"	"
352. Harriet "	5mo.	⅞	Md/Wn	"	"	"
353. Antoine J. Campbell	29	¼	Wn			Mn-SAg
354. Emilie "	8	⅛	Wn	Antoine J. Campbell, F.		"
355. Celia "	6	⅛	Wn	"	"	"
356. Mary "	4	⅛	Wn	"	"	"
357. Joseph "	1	⅛	Wn	"	"	"
358. Frederick La Chapelle	29	¼	Md	Single		"
359. Antoine "	25	¼	Md	"		Mn-CoR
360. Henry Angi	55	¾	Md			Mn-BSR
361. Mary "	—	½	Md	Henry Angi, H.		"
362. Victoria "	16	⅝	Md	"	, F.	"
363. Harriet "	14	⅝	Md	"	"	"
364. Mary "	12	⅝	Md	"	"	"
365. Nicholas "	10	⅝	Md	"	"	"
366. Josette "	7	⅝	Md	"	"	"
367. Thomas "	3	⅝	Md	"	"	"
368. Infant "	11mo.	⅝	Md	"	"	"
369. Joseph Montreul	50	½	Md			Mn-TdS
370. Lawrence "	16	¾	Md	Joseph Montreul, F.		"
371. Rosilla Dumerce	18	½	Si			Mn-LtR
372. Madeline "	16	½	Si	Francis Dumerce, F.		"
373. Francis "	13	½	Si	"	"	"
374. Alexis "	11	½	Si	"	"	"
375. Jon V. "	7	½	Si	"	"	"
376. Louis Laballe, Jr.	13	½	Si	Louis Laballe, F.		"
377. Margaret "	9	½	Si	"	"	"
378. Peter "	3	½	Si	"	"	"
379. Madeline "	1mo.	½	Si	"	"	"
380. Joseph Renville	44	¾	Md			Mn-LtR
381. Rosilla "	15	⅞	Md	Joseph Renville, F.		"
382. Daniel "	14	⅞	Md/Si	"	"	"
383. Angelic "	10	⅞	Md/Si	"	"	"
384. Agnes "	8	⅞	Md/Si	"	"	"
385. Thomas "	6	⅞	Si	"	"	"
386. William "	4mo.	⅞	Si	"	"	"
387. Anthony Renville	38	¾	Md			"
388. Isaac "	16	⅞	Md	Anthony Renville, F.		"
389. Sophia "	13	⅞	Md	"	"	"
390. Mary "	3	⅞	Md/Si	"	"	"
391. Samuel "	4mo.	⅞	Md/Si	"	"	"
392. John Renville	24	¾	Md	Single		"

393. Gabriel Renville	32	½	Md		"
394. Victor "	5	¾	Md/Si	Gabriel Renville, F.	"
395. Joseph Renville, Jr.	28	⅞	Md	Married. No children	Mn-Red
396. Joseph Laframboise, Jr.	28	½	Si		Mn-LtR
397. Josephine "	20	¾	Md	Joseph Laframboise, Jr., H.	"
398. Madeline "	1	⅝	Md/Si	" , F.	"
399. John "	3	¾	Md	" "	"
400. Alexis Laframboise	16	½	Si	Joseph Laframboise, Sr., F.	"
401. Julia "	14	½	Si	" "	"
402. Jane "	—	¼	Md	" , H.	"
403. William R. "	7	⅛	Md	" , F.	"
404. Justena "	5	⅛	Md	" "	"
405. Eliza	4mo.	⅛	Md	" "	"
406. Francis Laframboise	30	½	Md/Wn	Married	Mo-Riv
407. Louisa Dixon	16	¼	Md	Single	"
408. Scott Campbell	28	¼	Wn	Single	Mn-LtR
409. Mary "	16	¼	Wn	Orphan	"
410. Paul Campbell	26	¼	Wn		Mn-SAg
411. John "	2	⅝	Wn/Si	Paul Campbell, F.	"
412. Baptiste Campbell	24	¼	Wn		Mn-LtR
413. Rosalie "	—	¼	Md	Baptiste Campbell, H.	"
414. John Campbell	22	¼	Wn	Single	"
415. Collin Campbell	60	½	Wn	Married, no children	Mo-LaP

TWO EARLY LISTS OF MIXED-BLOOD SIOUX

The treaty between the U.S. and the Sioux Indians of the Mississippi of September 29, 1837 provided for a fund of $110,000 to be divided among the mixed bloods connected with the tribe. In the summer of 1838 two commissioners, W. L. D. Ewing and S. J. Pease came to the upper Mississippi valley and took testimony, eventually coming up with a list of 200 mixed-bloods which was then submitted to the tribe for its approval. After a few names had been stricken, the list was approved. This list, which is found in the "Special Files" of the U.S. Office of Indian Affairs, no. 200 (National Archives RG 75, Microfilm M574 Roll 59) contains the name, age, degree of Sioux blood and residence of each individual.

The list is important because it identifies individually many early natives of the upper Mississippi River valley and provides for them much detail not usually found otherwise until the 1850 census. The maiden names are given for several married women and the ages appear to be reasonably accurate. The degree of Indian blood should be considered more cautiously as the principal concern was to verify that the applicant had at least ¼ Sioux blood, the minimum required for inclusion. In fact some of the quarter bloods are known from other sources to be ¾ Sioux. Also, because different individuals received differing amounts, various members of a particular family will frequently be found widely separated on the list.

In 1841 James Duane Doty, Governor of Wisconsin Territory, as part of a series of treaties with various bands of the Sioux in the Minnesota area, negotiated an agreement with the mixed bloods to sell a tract of land granted them in an 1830 treaty. The 1841 treaty, which was never ratified, was signed by a number of the mixed bloods. A transcript of this treaty and its signatures can be found in the "Letters Received by the Office of Indian Affairs: St. Peters Agency" (National Archives RG 75, Microfilm M234 Roll 759).

The signers were only a portion of those affected by the treaty, but were probably all the commissioners could induce to sign in the short time available to them. Although the list is therefore quite incomplete, for those families it includes, it does provide useful information such as names of children living at the time, some maiden names and many specified relationships.

These lists are just a sample of the records created by the federal government in its dealings with the various tribes and their mixed-blood relatives, many of which have genealogical value. Since many of the individuals involved appear only infrequently in more commonly used records the Indian records, as these examples show, can be an important additional source of otherwise unrecorded genealogical information. However, much research remains to be done to identify and locate useful material, to bring it to the attention of the genealogical public, and to make it more easily accessible.

Submitted by James L. Hansen, Reference Librarian, State Historical Society of Wisconsin, 816 State Street, Madison, Wisconsin 53706.

REGISTER of Claims under the Second Clause of the Second Article of the Treaty made with the Sioux Indians of the Mississippi, at Washington City September 29th 1837, as passed upon by the United States Commissioners and the Chiefs and Braves the Proper Authorities of said tribe.

	Name	Age	%	Residence
1.	Joseph RENVILLE, Sr.	58	HB	Lac Qui Parle, St. Peters
2.	Scott CAMPBELL, Sr.	42	HB	St. Peters Agency, Fort S.
3.	Augustin ROCK, Sr.	58	HB	Lake Pepin
4.	Pelagie FERREBAULI	55	HB	St. Peters, Fort Snelling
5.	Pelagie LACHAPELLE	54	HB	Prairie du Chien
6.	Francis LABATHE	38	HB	"
7.	Emily HOOE	27	QB	"
8.	Duncan CAMPBELL, Sr.	48	HB	Foot of Lake Pepin
9.	Alexander FERREBAULT	33	QB	St. Peters near Fort S.
10.	Joseph MONTRAVILLE, Sr.	33	HB	Lake Pepin
11.	Joseph RENVILLE, Jr.	28	QB	Lac Qui Parle
12.	Joseph ROCK, Sr.	28	HB	Lake Pepin

13.	Margaret MOOERS	45	HB	Below Fort Snelling 18 mi.
14.	Lucy F. BAILLY	30	QB	St. Peters near Fort S.
15.	Sally Graham CRATT	27	HB	"
16.	Elizabeth ROLETTE	24	QB	Prairie du Chien
17.	Angus M. ANDERSON	27	QB	St. Peters near Fort S.
18.	Samuel J. FINDLEY	20	QB	St. Peters
19.	Duncan CAMPBELL, Jr.	23	QB	Foot of Lake Pepin
20.	Oliver FERREBAULT	23	QB	St. Peters near Fort S.
21.	John B. MOUZEAU	2	HB	St. Croix River
22.	Alexander GRAHAM	17	HB	St. Peters near Fort S.
23.	Joseph PROVENCALLE	20	HB	Traverse des Sioux
24.	John B. LORD	11	HB	St. Peters
25.	Jenny ROBERTSON	25	QB	Below Fort Snelling 18 mi.
26.	Madeline C. RUSICO	18	QB	St. Peters Agency, Fort S.
27.	Nancy Graham BESON	31	HB	"
28.	Susan FRESENIERE	20	HB	Medicine Wood, Pine Bend
29.	Lucy PRESCOTT	11	HB	St. Peters near Fort S.
30.	Therese BRISBOIS	24	QB	Prairie du Chien

31.	Emily FERREBAULT	19	QB	St. Peters near Fort S.
32.	Mary L. TALIAFERRO	11	HB	Mission School, Lake Harriet
33.	Manet M. FERREBAULT	18	HB	St. Peters near Fort S.
34.	Gabriel FERREBAULT	1	QB	"
35.	Jane Ann MOOERS	11	QB	Below Fort Snelling 18 mi.
36.	Madeline MOOERS	8	QB	"
37.	Mary MOOERS	12	QB	"
38.	William DICKSON	45	HB	Vermillion River, Missouri
39.	Jane DICKSON	18	QB	"
40.	Henry ONGI	38	HB	"
41.	Mary Dickson ONGI	22	HB	"
42.	Rosella ONGI	1	QB	"
43.	Benjamin DYOMINE?	19	QB	St. Peters

Angelique OGI, by her father X

M. Ls. C. C. FAREBAULT, Frederick FAREBAULT, Alex FAREBAULT, by their father Bte. FAREBAULT

Elizabeth FAREBAULT by her husband A. FAREBAULT

George FAREBAULT, Agness FAREBAULT, Oliver FAREBAULT by their father Alexr. FAREBAULT

Harriet MANGRE, by her husband Oliver FAREBAULT

David FAREBAULT

Margaret MOOERS by her husband H. MOOERS
John MOOERS, Mary MOOERS,
Jane Ann MOOERS by their father R. MOOERS

Anthony J. FINDLEY

Marie BELLAND by her husband Honore BELLAND

Madeline CAMPBELL
Harriet CAMPBELL
Joseph CAMPBELL
Hippolit CAMPBELL
Battist CAMPBELL & John CAMPBELL by their father S. CAMPBELL
Margaret CAMPBELL

S. J. FINDLEY

Alexander D. CAMPBELL Jr.

Rosalie FRESNIERE X
Angelique FRESNIERE X
Margerite FRESNIERE X
Louis FRESNIERE by his grandfather Francois FRESNIERE

Jos. LAFRAMBOISE Jr.

Bte. FAREBAULT
Pelaji FAREBAULT by her husband Bte. FAREBAULT
Emily R. FAREBAULT

Frozin ST. ANTOINE, Pierre? ST. ANTOINE,
Jos. ST. ANTOINE by their father Charles ST. ANTOINE X

Pauline BRUNSON

Angelique MONTOUR by her husband Jos. MONTOUR

Cath. ROCK by her husband Fr. LAPOINTE

Pierre LA RIVIERE, Michel LA RIVIERE, Isadore LAPOINTE, Xavier LAPOINTE by their father F. LAPOINTE X

Chs. PIZANNE, Emily PIZANNE, George PIZANNE by their guardian H. L. DOUSMAN

Because each entry on the original roll was on two oversized pages, liberal use of abbreviations has been necessary to keep this publication within reasonable bounds. The abbreviations for the bands are as follows:

Md=Mdewakanton; Si=Sisseton;
We=Wahpekute; Wn=Wahpeton.

The abbraviations for relationships are for the most part self-explanatory except for guardians. G. signifies a guardian, frequently a stepparent or other close relative whose guardianship is not recognized legally, i.e. he or she is not court-appointed. L.G. signifies a legal guardian.

Geographic Abbreviations

1.	Ca-SF	San Francisco, Cal.
2.	Da-FtP	Fort Pierre, Dak. Terr.
3.	Ia-Dub	Dubuque, Iowa
4.	Ia-DuC	Dubuque County, Iowa
5.	Ia-WoC	Woodbury County, Iowa
6.	Il-Gra	Grafton, Ill.
7.	Il-Vie	Vienna, Ill.
8.	Mn-Bel	Bellevue, Minn.
9.	Mn-BSL	Big Stone Lake, Minn.
10.	Mn-BSR	Mouth of Big Sioux R., Minn.
11.	Mn-CoM	Mouth of Cottonwood, R, Minn.

12.	Mn-CoR	Cottonwood River, Minn.
13.	Mn-DaC	Dakota County, Minn.
14.	Mn-Far	Faribault, Minn.
15.	Mn-FtD	Fort Douglass, Minn.
16.	Mn-Has	Hastings, Minn.
17.	Mn-HeC	Hennepin County, Minn.
18.	Mn-Hen	Henderson, Minn.
19.	Mn-LeC	Le Sueur County, Minn.
20.	Mn-LtR	Little Rock, Minn.
21.	Mn-LQP	Lac qui Parle, Minn.
22.	Mn-Men	Mendota, Minn.
23.	Mn-Pem	Pembina, Minn.
24.	Mn-Rac	Ramsey County, Minn.
25.	Mn-Red	Redwood, Minn.
26.	Mn-Ric	Rice County, Minn.
27.	Mn-RiL	Rice Lake, Minn.
28.	Mn-SAg	Sioux Agency, Minn.
29.	Mn-ScC	Scott County, Minn.
30.	Mn-Sha	Shakopee, Minn.
31.	Mn-StA	St. Anthony, Minn.
32.	Mn-StP	St. Paul, Minn.
33.	Mn-TdS	Traverse des Sioux, Minn.
34.	Mn-Wab	Wabasha, Minn.
35.	Mn-WaC	Washington County, Minn.
36.	Mn-WBL	White Bear Lake, Minn.
37.	Mn-YeM	Yellow Medicine, Minn.
38.	Mo-ClC	Clay County, Mo.
39.	Mo-LaP	La Platte, Mo.
40.	Mo-Riv	Missouri River
41.	Mo-Stl	St. Louis, Mo.
42.	NY-NYC	New York, N.Y.
43.	Unk	Unknown
44.	Wi-GB	Green Bay, Wis.
45.	Wi-PdC	Prairie du Chien, Wis.

46. Wi-StC St. Croix County, Wis.
47. Wi-IrC Irempealeau County, Wis.

Submitted by
James L. Hansen
Reference Librarian
State Historical Society
of Wisconsin
816 State Street
Madison, Wisconsin 53706

A List of the White persons and Half Breeds delivered at Camp Release Oct. 1862

George H. Spencer Jr.
Mrs. Dr. Wakefield and two children
Mrs. J. W. Earle and two daughters
Mrs. N. D. White and two children
Mrs. Elizabeth Gauthers and one child
1 ✓ Benedict Enne – age ten years
Mrs. Mattie Williams
1 ✓ Mrs. Mary Lison
✓ Mrs. Cook from Lake Shetek
✓ John Wright in charge of Mrs. Cook
3 ✓ August Boos and two sisters
3 ✓ Mrs. Mary Patterson and two brothers
2 ✓ John Smitt and sister
5 ✓ Mrs. Pauline [Illegible] and four children
3 ✓ Mrs. Amalia Lange and two children
3 ✓ Mrs. Estina [Illegible] and two children
6 ✓ Mrs. Theresa Eisensich and five children
3 ✓ Mrs. Sophy Limmas and two children
Jane Ingalls and sister
2 ✓ Nancy Courselle and sister
4 ✓ Harriet Robinett, brother and two sisters
3 ✓ Mrs. Martha Clasan and two children
1 ✓ Mrs. Harriet Adams
3 ✓ Mrs. Matilda Labatte and two children
4 ✓ Mrs. Harriet Valliant and two [three] children
2 ✓ Mrs. Margaret [Illegible] and one child

1	✓	Elizabeth Pecard, sister's child of Mrs. Cardinal
3	✓	Mrs. Antoina LaBlanc and two children
1	✓	[Illegible] Labatte
4	✓	Mrs. Dorothia [Illegible] and three children
2	✓	Mrs. [Illegible] Eindenfeld and child
1	✓	Mrs. [Illegible] Lane
1	✓	Henrietta Kreiger, four years old
1	✓	Mrs. Frances Wochler
		Mrs. Maj. J. R. Benson and eight children
		Mrs. Charles Moir and two children
		Mr. and Mrs. [Illegible] Benson and child
1	✓	Louis Rothman, twelve years old
1	✓	[Illegible], ten years old
1	✓	Henrietta [Illegible], nine years old
1	✓	Solomon Bordah, seven years old
		Mrs. Josephine Huggins and two children
5	✓	Mrs. Mary Woodbury and four children
		Mrs. Sarah [Illegible] and three children
2	✓	Mrs. Lucy Taunt and one child
		George Thompson
1	✓	Mrs. Eunice Wilson
3	✓	Ms. Rosalie McLane and two children
4	✓	Mr. and Mrs. Larramie and two children
		Thomas Robertson
		Mrs. Robertson and three children
		Mrs. Marion Hunter
		Mr. Gabriel Renville and five children
		Charlie Crawford

Mrs. [Illegible] and two children
Mrs. Theresa Renville and three children
Mr. Antoine Renville and three children
Miss Sophia Renville
Isaac Renville
Mr. and Mrs. John B. Renville and child
Mr. Joseph Renville and child
Rosalia Renville and child
David [Illegible] and brother
Mr. and Mrs. Scott Campbell and three children
Mr. Michael Renville and three children
Mr. Labelle and five children
Mary [Illegible]
Charles Mitchel and five children
Lucy Campbell and child
Mr. and Mrs. Joseph Campbell and seven children
Mrs. Finby and boy
Hypolite [Illegible]
Louis Martin, wife and three children
Mr. and Mrs. Joseph Lafromboise and two children
Mary Lafromboise and child
Mrs. Julia [Illegible] 84
Peter [Illegible] and child
Joseph [Illegible] and child
Joseph Martin, wife and three children 5
✓ [Illegible] Charboner
John [Illegible], wife and three children

John Moor, wife and six children
Miss Jeannie Moor
August Robertson
Augusta Robertson
[Illegible] Robinson
Henry Millard
Mrs. Campbell
John Campbell and child
Baptiste Campbell and two children
Celia [Illegible]
Duncan Campbell wife and six children
David Fairbault Jr.
Mick Graham and five children
Mr. David Graham Jr.
Mrs. Nancy Fairbault and child
Mary Josephine Fairbault
Joseph LeBlanc and six children
Joseph [Illegible] and four children

In all – white persons	107		33
Half Breeds	162		63
	269		

Held at Camp Release
Whites v. Half Breeds

Bishop Henry Benjamin Whipple

There was one man in Minnesota who was not swept off his feet by the tide of passion which raged throughout the state. This was Henry Benjamin Whipple, who in November, 1859, at the age of thirty-seven had come to Minnesota as the first bishop of the Protestant Episcopal Church. He was descended from distinguished Revolutionary stock and was richly endowed with bodily and mental gifts. Debarred by infirm health in youth from completing the traditional classical education, he was thrown into business and political relations, which perhaps gave him a better raining for his future work than he might have got from the odes of Horace and Pindar.

If ever a man was fitted for the time and the place, Bishop Whipple was. Tall and strongly built, gracious but not patronizing in manner, he easily won the good will of men of every class and creed. His enthusiasm was tempered by a saving common sense and an abounding humor. He magnified his office, but only to do the greater service to those to whom he was called to minister. He laved all me; he feared no man. He had been in Minnesota but a fortnight when he made an excursion to Fort Ripley to ascertain the condition of the mission to the Chippewa at Gull Lake. The mission had been established some seven years before by the enthusiastic James Lloyd Breck, but he had been suspended in 1857 because of the turbulence of the Indians due to the inundation of fire water which followed the treaties of 1854 and 1855. This journey and its experiences kindled in the heart

of the young bishop an interest in the red man which never abated to the end of his life.

Bishop Whipple informed himself of the condition and prospects of both nations and soon became satisfied that much of their wretchedness was chargeable to the indifference, not to say the rascality, of white men.

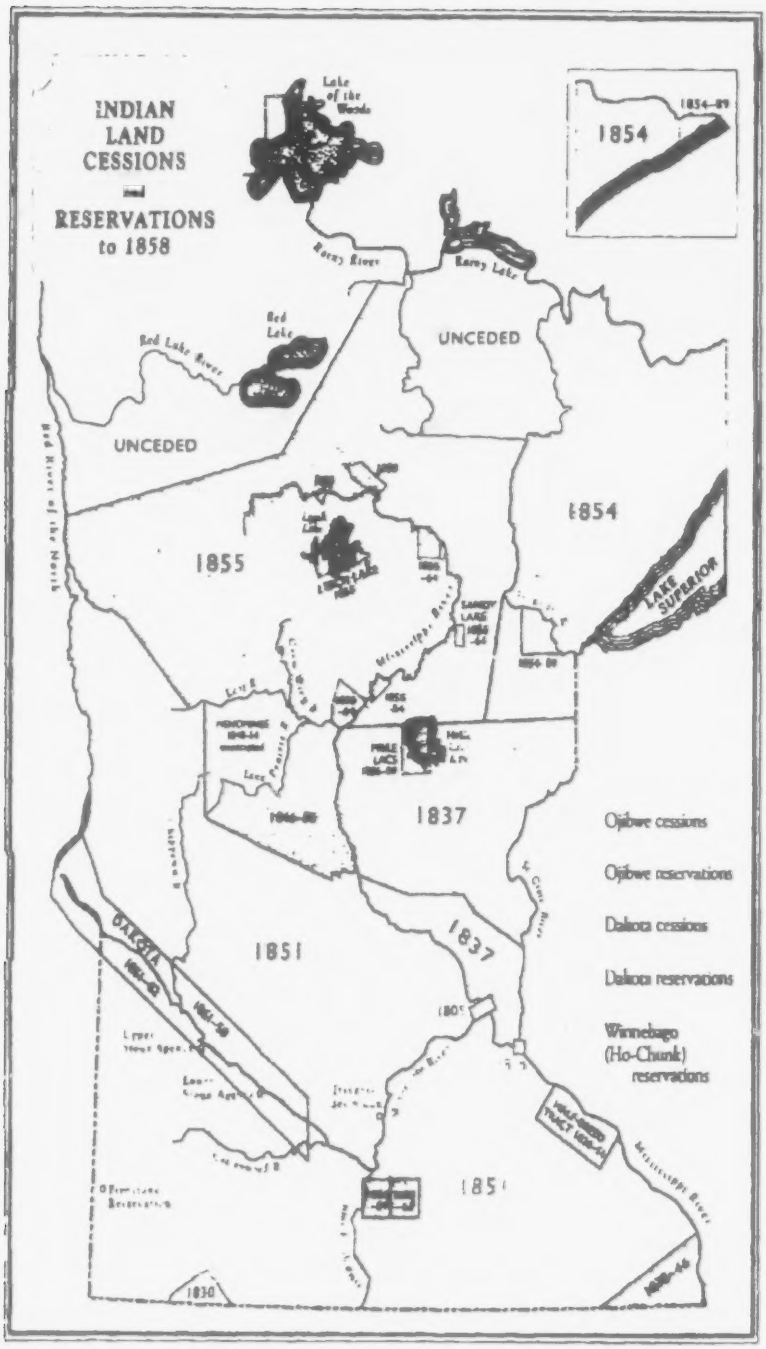
[O]n the sixth of March, 1862 Bishop Whipple addressed an open letter to President Lincoln, in which he summarized the iniquities of the Indian system and insisted on the supreme importance of placing the Indians under a government of law, administered by hones and capable men selected for their merit and fitness and not as a reward for political services.

Knowing as he did better than any other man in Minnesota, unless it was Sibley, the operation of the Indian policy and the machinations of selfish and dishonest officials, traders, employees, and half breeds, he was not surprised at the outbreak in August, 1862.

In the fall of 1862 Bishop Whipple was in Washington and, in company with his friend and relative, General Halleck, he called on President Lincoln. In he course of their interview he gave an account of the outbreak, its causes, and the sufferings of the Sioux. That he did this with the force and eloquence of which he was so capable may be inferred from a remark made by the president not long after: "He came here the other day and talked with me about the rascality of this Indian business until I felt it

down to my boots." It is not likely that this impression had faded out when the president came to act upon the findings of the military commission. In December Bishop Whipple published in the St. Paul newspapers a calm, clear statement of the train of events which had led to this terrible explosion. So far as is known, he was the only public man who had the courage to face the whirlwind of popular denunciation of all Indians and of the Dakota in particular. To punish the guilty would avail little if the traditional Indian policy was to be left unreformed. In some quarters the bishop came in for denunciation almost as spiteful and unsparing as that directed against the Sioux themselves, but he never retracted a syllable nor budged an inch. [Folwell, A History of Minnesota, Vol. II]

Biographies Page
Dakota Conflict Trials Page


INDIAN
LAND
CESSIONS
and
RESERVATIONS
to 1858
Lake of the Woods
Rainy River
Rainy Lake
Red Lake
Red Lake River
UNCEDED
UNCEDED
1854
1854-55
1855
1854
LAKE SUPERIOR
1837
1851
1837
1851
1851
1837
Ojibwe cessions
Ojibwe reservations
Dakota cessions
Dakota reservations
Winnebago
(Ho-Chunk)
reservations

WASTE OF WARRIORS IN THE WEST. – The State of Minnesota, feeling aggrieved by the Government's slow and humanitarian mode of conducting war against the hostile Indians within her borders, has lately adopted some very decisive but questionable measures of her own for getting rid of the "red devils." A proclamation appeared offering a State bounty for every "scalp" of a Sioux that should be brought in by volunteer and amateur hunters. The document rested upon the official authority of Gov. (now United States Senator) RAMSEY, and greatly shocked some of that gentleman's Eastern friends, who made haste (too much haste it seems) to repudiate the proclamation as a forgery and a slander.

But later accounts confirm the authenticity of the original document, which, however, has since undergone some modification. The hunters of the red-skins are no longer required to produce the scalps torn from the head of the slain victims, but must furnish "satisfactory affidavits" of their exploits in bringing down their human (or inhuman) game. A St. Paul correspondent of a cotemporary gives the Minnesotan view of the subject as follows:

> "Whatever exceptions humanitarians might take to the scalp bounty, they would soon be convinced of the wisdom and necessity of the present order if they would come among us, and expose their own scalps, instead of keeping at a safe distance, and prating about humanity. A 'Moral Minnesotan' is informed that he doesn't need to

> defend Senator RAMSEY from the imputations of issuing the order, as it is an act he is free to acknowledge, and ready to sustain."

It is undoubtedly true that a protracted residence on the Western frontier is fatal to the existence of sympathies once cherished for the "poor Indian." The feud between man and the serpent, begun in the Garden of Eden, is not more implacable than that between a frontiersman and a Sioux. Hence Minnesota will continue, without shame or remorse, to pay bounties for Sioux scalps, as other States pay for wolf scalps. It is a "State right" that will not be given up.

The operations under the State policy are active, and the papers boast, successfull. The correspondence above quoted has this account of the incidents and character of the conflict as now waged under State auspices:

> "Stray Indian horse thieves are constantly being seen and killed along the frontier. Two Indians were surrounded on the prairie a few days since by twelve soldiers, and they fought like tigers. One loaded and fired eight times, and the other four; and they did not fall until one was pierced with eight bullets, and the other with six, any one of which inflicted a mortal wound. A bullet would pass through their bodies without causing them to flinch. The State scouts, and the large bounty offered for those who choose to hunt independently, is resulting in the 'taking off' of numerous red devils, and will prevent the depopulation of the frontier."

A Washington correspondent of the paper from which these extracts are quoted, gave a few days since a very discouraging account of the moral and political condition of these western Indians, and advised that they be mustered quickly into the United States military service, to keep them out of mischief. Unless the Minnesota hunters are checked in their pastime, there will be few recruits left us when we begin to swear in the red-skins.

The New York Times
Published: August 18, 1863
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